Supreme Court, U.S.
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No. 02-

IN THE

Supreme Court of the United States

PATRICK C. ENGLISH and THE BOARD OF EDUCATION OF THE BOROUGH OF LINCOLN PARK,

Petitioners,

v.

THE BOARD OF EDUCATION OF THE TOWN OF BOONTON and WILLIAM L. LIBRERA, COMMISSIONER OF EDUCATION,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

In accordance with New Jersey law, the Lincoln Park School District sends its high school age students to the Boonton Township School District to attend Boonton High School and pays Boonton a *pro rata* share of the high school operating costs on a per student basis. Lincoln Park students comprise over 50% of the student population in the high school and the population of Lincoln Park exceeds the population of Boonton Township. However, pursuant to N.J.S.A. 18A:38-8.2 (the "Send-Receive-Statute"), a school district in New Jersey that sends its high school aged children to another district for public education is entitled to only one member on the receiving district's board of education when the students of the sending district comprise 10% or more of the total enrollment of the pupils in the receiving district.

The United States District Court for the District of New Jersey, the Honorable Faith S. Hochberg presiding, found the foregoing statutory scheme unconstitutional as applied to the Lincoln Park/Boonton relationship under the principles of one person-one vote embodied in the Equal Protection clause of the Fourteenth Amendment to the United States Constitution. In doing so, the District Court heavily relied on Supreme Court precedent *Hadley v. Junior College District of Metropolitan Kansas City*, 397 U.S. 50 (1970). The United States Court of Appeals for the Third Circuit, however, reversed relying on another Supreme Court decision, *Holt Civic Club v. City of Tuscaloosa*, 439 U.S. 60 (1978), all but ignoring *Hadley*.

The question presented in this case is to what extent can a political subdivision controlled by an elected governing body exercise important and fundamental governmental powers over a neighboring community without proportional representation for that community and, where such a fundamental governmental function is exercised as control over high school education, does the lack of proportional representation violate the one person-one vote requirements of the Fourteenth Amendment to the United States Constitution.

The context for this question is whether a ten member Board of Education located in the Town of Boonton, nine members of which are elected from the Town of Boonton and only one member elected by the Board in Lincoln Park, may control the high school education of Lincoln Park students and assess the cost of high school education from Lincoln Park where Lincoln Park has a majority of the students going to the high school, pays a majority of the operating expenses of the high school, and has a majority of the combined populations of the two towns.

The last words on the subject are set forth in *Hadley* and *Holt*, and clarification is needed from this Honorable Court as to how lower Courts are to assess the degree to which the exercise of fundamental governmental powers require proportional representation.

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Petitioners respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Third Circuit in this case.

OPINIONS BELOW

The United States District Court for the District of New Jersey, the Honorable Faith S. Hochberg presiding, entered its Opinion and Order on March 26, 2001 granting summary judgment on liability in favor of petitioner, Patrick C. English (Pet. App. at 43a), which decision is published at 135 F. Supp.2d 588. After granting intervenor status to the Board of Education of Lincoln Park on August 21, 2001, the District Court entered an Opinion and Order imposing an interim remedy requiring proportional representation pending enactment by the New Jersey Legislature of a constitutionally permissible alternative (Pet. App. 32a), with the opinion published at 161 F. Supp.2d 344. The United States Court of Appeals for the Third Circuit filed its opinion (per Becker, C.J., joined by Scirica and Rendell), on August 2, 2002 (Pet. App. 1a). That Opinion, which reversed the District Court Orders, is published at 301 F.3d 69. In a related case, the United States District Court for the District of New Jersey, the Honorable Anne E. Thompson presiding, also entered an Opinion and Order granting summary judgment on September 7, 2000 finding the New Jersey Send-Receive Statute unconstitutional as applied in the case of *The Board of Education of the Township of Branchburg, et al. v. David Livingston, Somerset County Superintendent, et al.*, Civil No. 98-557 (AET) and 99-822 (consol.) (Pet. App. 60a). That case is presently pending appeal before the United States Court of Appeals for the Third Circuit.

STATEMENT OF JURISDICTION

The Court of Appeals filed its Opinion and Order on August 2, 2002. 301 F.3d 69. This Petition for a Writ of Certiorari is filed pursuant to 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

The provisions of the New Jersey Send-Receive Statute N.J.S.A. 18A:38-8.2 relevant to this Petition are reprinted in the Appendix at 46a.

STATEMENT OF THE CASE

1. Under New Jersey law, the board of education of each school district must educate all children, including high school aged children, domiciled within each district. N.J.S.A. 18A:38-1. To comply, a school district has three options. First, it may build its own schools. Second, it may join with other districts to build schools and create a regional school district. A regional school district is a distinct legal entity in which each constituent district is a member of the regional district and which is operated by a single board of education constituting one voting jurisdiction. N.J.S.A. 18A:13-1, *et seq.* Third, the district may enter into a "sending-receiving" relationship whereby it educates its students in the high school of the receiving district to which it pays tuition based upon its proportion of actual operating costs. N.J.S.A. 18A:38-8, *et seq.* If the sending district's pupils comprise at least 10% of the total enrollment, the sending district is allowed one representative on the receiving district's board of education. N.J.S.A. 18A:38-8.2.

2. Over 50 years ago, Lincoln Park and Boonton Township entered into a send-receive relationship for high school with Lincoln Park sending its high school aged students to Boonton High School. Each district elects its own nine member Board of Education. Lincoln Park's Board has authority over the district's K-8 school children. Boonton Township's Board likewise has authority over its own K-8 school children as well as district wide issues. Most relevant to this matter, the Boonton Board of Education has control over the high school education of high school age students from both Lincoln Park as well as those from Boonton. Pursuant to N.J.S.A. 18A:38-8.2, the Lincoln Park Board is entitled to elect one member to sit on the Boonton Board, and that board member is entitled to vote on certain specific issues (basically all issues pertaining to the high school and costs per pupil). N.J.S.A. 18A:38-8.1. That ten member Board including the one member from Lincoln Park has authority over issues dealing with Boonton High School.

3. The population of Lincoln Park is, according to the 2000 Census, 10,930. The population of Boonton is 8,496. This means that there is one Boonton representative on the Boonton Board of Education for every 944 Boonton residents and that the sole Lincoln Park Board member represents 10,930 residents, an approximate 11 to 1 disparity in representation. Lincoln Park also sends more than 52% of students to the high school, with some 326 students coming from Lincoln Park and some 296 students coming from Boonton, for the 2001-2002 school year. Lincoln Park has had the majority of students at the high school for many years.

4. The cost per pupil assessed to Lincoln Park is not negotiated. It is imposed by N.J.S.A. 18A:38-19 and by N.J.A.C. 6:20-3.1, *et seq.*, and the actual cost per pupil at the high school. Thus, having the majority of students at the high school Lincoln Park taxpayers are required to pay the majority of the operating costs of the high school. Such permissibly charged costs also include a *pro rata* share of district wide costs to the extent that they cover the high school (*i.e.* central administration, Board of Education costs, etc.), N.J.A.C. 6:20-3.1, *et seq.* Any increases in the cost per pupil for high school pupils is automatically, by regulation and statute, passed on to Lincoln Park taxpayers. *See* N.J.S.A. 18A:38-19 and N.J.A.C. 6:20-3.1, *et seq.*

5. Neither party to a sending receiving relationship may withdraw without the consent of the New Jersey Commissioner of Education. N.J.S.A. 18A:38-13. For a sending district with greater than 3% of the school population to be severed in a sending receiving relationship there must be a feasibility study which shows that there will be no substantial negative economic or educational consequences to either district. *See, e.g.*, *Board of Education of Township of Boonton v. Board of Education of Town of Boonton*, 97 N.J.A.R. 2d 235 (1992). It was conceded before the District Court that there would be a substantial negative educational and economic consequence to severance. While Respondents subsequently objected to the opinion that the Commissioner of Education could not statutorily allow severance, it is undisputed that Boonton is a small high school, which has approximately 53% of its operating budget coming from Lincoln Park. Further, it is not disputed that Lincoln Park has no high school and no facilities suitable for a high school. It is also undisputed that the Commissioner of Education was not able to identify below any instance of

a finding of negligible economic and educational impact while permitting a severance where an application involved in excess of 25% of the student body of the school in question.

6. Petitioner, Patrick C. English, a resident and taxpayer of Lincoln Park, brought suit, *pro se*, challenging the constitutionality of the Send-Receive Statute under the Equal Protection clause of the Fourteenth Amendment on the ground that it deprived him of equal voting rights. The Lincoln Park Board of Education was granted intervenor status. As more fully set forth below, the District Court agreed and entered summary judgment for Petitioner and ordered an interim remedy, pending legislative action, that required Lincoln Park be given proportionate representation on the Boonton Board on high school issues. The Court of Appeals for the Third Circuit reversed and this Petition for Writ of Certiorari follows.

REASON FOR GRANTING THE PETITION

Certification Should Be Granted in Order to Clarify the One Person-One Vote Rule as Previously Delineated in Two Supreme Court Cases, One Relied Upon by the District Court, the Other Relied Upon by the Circuit Court.

This case is governed by either *Hadley v. Junior College Dist. Of Metropolitan Kansas City*, 397 U.S. 50 (1970); or *Holt v. Civic Club of City of Tuscaloosa*, 439 U.S. 60 (1978). Two United States District Court Judges applied the principles of *Hadley* to invalidate the New Jersey Send-Receive Statute on "one person-one vote" principles. In reversing one of these decisions, the United States Court

of Appeals for the Third Circuit, however, followed *Holt*. Certification should be granted to further clarify the context in which one person one vote rule should apply

In *Hadley*, appellants were the residents and taxpayers of the Kansas City School District. *Hadley*, 397 U.S. at 51. The Kansas City School District was one of eight separate school districts that under Missouri law had voted by referendum to establish a consolidated junior college district. *Id.* According to Missouri law, six trustees were elected from among the eight districts to conduct and manage the necessary affairs of the junior college district. *Id.* These trustees were apportioned among the districts based on persons in a certain age range residing in each district. The appellants' complaint in *Hadley* was that while the Kansas City School District consisted of 60% of the population, under the statute it was apportioned only 3 (50%) of the trustees. *Id.* As such, appellants contended that their right to vote for trustees was unconstitutionally diluted.

The *Hadley* Court, Justice Black writing, agreed. The *Hadley* Court recognized that education "has traditionally been a vital governmental function." *Id.* at 56. These functions, according to appellants, consisted of the ability to "levy and collect taxes, issue bonds with certain restrictions, hire and fire teachers, make contracts, collect fees, supervise and discipline students, pass on petitions to annex school districts, acquire property by condemnation, and in general manage the operations of the junior college." *Id.* at 53. The *Hadley* Court held that:

> as a general rule, whenever a state or local government decides to select persons by popular election to perform governmental functions,

> the Equal Protection Clause of the Fourteenth Amendment requires that each qualified voter must be given an equal opportunity to participate in that election, and when members of an elected body are chosen from separate districts, each district must be established on a basis that will insure, as far as practicable, that equal numbers of voters can vote for proportionally equal numbers of officials.

Id. at 56. The *Hadley* Court therefore ruled unconstitutional that statutory scheme under Missouri law which discriminated against larger school districts by diluting their right to proportionate representation on the 6 member trustee board.

In *Holt*, appellants were a civic association and residents of Holt, Alabama, a small unincorporated community located just outside of the city limits of Tuscaloosa, Alabama. Under Alabama law, the residents of Holt were subject to the police and sanitary regulations of Tuscaloosa. Specifically at issue was the right under Alabama law for Tuscaloosa to subject Holt residents to the jurisdiction of the City's Criminal Court and to license businesses, trades and professions. *Holt*, 439 U.S. at 385-386.

The *Holt* appellants brought suit because the statute in question did not permit Holt residents the right to participate in the election of Tuscaloosa government officials. Appellants claimed that the City's extraterritorial extension of police powers without a concomitant extension of the franchise violated the Fourteenth Amendment.

Justice Rehnquist, writing for a divided Court, upheld the statutory scheme without reference to *Hadley*. The *Holt* Court reasoned that no decision of the Supreme Court had ever extended the "one man, one vote" principal to individuals residing beyond the geographic confines of the governmental entity concerned. *Id.* at 68. Thus, the City of Tuscaloosa's exercise of these governmental authorities without giving the residents of *Holt* the right to vote was not unconstitutional. *Id.*

Petitioner English pointed out below that high school education, typically over the course of a four year period, is considered much more of a fundamental governmental function than is a two year junior college education, the subject of *Hadley*. Petitioner also pointed out that on high school issues the Boonton Board of Education's educational responsibilities and representational responsibilities cover both the geopolitical subdivisions of the Town of Boonton and the Borough of Lincoln Park.

As noted above, the two United States District Court Judges who faced the issue as applied to the New Jersey Send-Receive Statute relied upon *Hadley*. Judge Anne Thompson in the *Branchburg* case stated as follows:

> The Court concludes that . . . statute is unconstitutional as applied because it denies Branchburg citizens the right to elect representatives to oversee the high school education of their children in contravention of the "one person, one vote" principle. The United States Supreme Court has consistently held that citizens have a substantial interest and fundamental right to exercise their right to vote for local school board

> members where those officials are chosen by the electorate at large. See generally *Hadley v. Junior College District*, 397 U.S. 50 (1969).

(Pet. App. 65a).

Judge Thompson distinguished *Holt* noting that "[t]his is not a case where the Somerville Board's activities have an 'indirect extraterritorial effect' on the citizens of Branchburg and their children. *See Holt Civic Club v. City of Tuscaloosa*, 439 U.S. 60, 69-70 (1978)." (Pet. App. 65a).

Likewise, Judge Hochberg writing below for the United States District Court for the District of New Jersey stated in relevant part

> As did the citizens of *Hadley* and *Branchburg*, the citizens of Lincoln Park have a fundamental interest in the education of their students and in proportionate representation on the Boonton Board . . . [T]he Boonton Board has the power to hire and fire teachers, set curricula and change extracurricular activities. Furthermore, the citizens of Lincoln Park have an interest in the amount of tuition payments the town must make for students sent to the Boonton High School, which payments are determined in part by the high school budget voted on by the Boonton Board. . . . The unequal apportionment of voting power in the statute thus "results in a systematic discrimination against voters" in Lincoln Park. *Hadley*, 397 U.S. at 57, 90 S.Ct. 791.

(Pet. App. 54-55a); *English*, 135 F. Supp. at 594. Judge Hochberg dismissed the *Holt* argument that Lincoln Park is

a separate geographical district because in *Hadley* the geographic boundaries of the eight separate school districts had "no impact on the applicability of the constitutional right of the citizens of one district to have his or her vote given the same weight as citizens of the other districts." (Pet. App. 56a); 135 F. Supp. at 594-595.

The Third Circuit, however, construed *Holt* to mean "that strict scrutiny will be applied to the exclusion of non-residents from the elections of a particular governmental entity only when that government exercises a level of control over the non-residents' lives close to or equal to that which it exercises over those who actually reside within its borders." (Pet. App. 26a). *English*, 301 F.3d at 79. The Third Circuit went on to say that "the mere fact that a municipality's actions have an impact — even a substantial impact — on non-residents does not entitle those non-residents to vote in the municipality's elections." *Id.* The Third Circuit then minimized the impact the Boonton Board has on Lincoln Park residents because the statute only affects Lincoln Park residents with respect to their high school-aged children. *Id.*[1] Notwithstanding the observations that in an "ideal system of government, the residents of Lincoln Park would be entitled to a level of representation on the Boonton Board that is exactly proportional . . . " and that the District Court's remedy was "well-intentioned," the Third Circuit upheld the constitutionality of the Send-Receive Statute. (Pet. App. 22-23a); 301 F.3d at 80.

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1. Petitioners cannot but note that a high school education generally mandated for a four year period, is no less important and probably more so, than an optional junior college education such as that at issue in *Hadley*.

The Third Circuit opinion relying so heavily on the geographical boundaries between Lincoln Park and Boonton is also at odds with the Eighth Circuit Court of Appeals decision in *Little Thunder v. South Dakota*, 518 F.2d 1253 (8th Cir. 1975). In that case, South Dakota law precluded residents of "unorganized" counties from voting in "organized" county elections where the "organized" county governments wielded the same power over "unorganized" county residents that it did on its own residents. The Court found the scheme unconstitutional and rejected the notion that geographic residency requirements justified the exclusion. *Id.* at 1258.

Moreover, the Third Circuit below simply failed to recognize the limited holding of *Holt* itself. The majority decision in *Holt* was clear that its decision was based on the limited scope of the governmental powers exercised by the City of Tuscaloosa. *See Holt*, 439 U.S. at 72 n.8. The concurring opinion in *Holt* by Justice Stevens went so far as to say that the decision specifically does not apply to important aspects of state power such as school governance or taxes. *Id.* at 76 (Stevens J. concurring).

In the case at hand, the Boonton Board exercises far more governing power over Lincoln Park residents than the municipal court's jurisdiction or business licensing fees at issue in *Holt*. Indeed, the Boonton Board's power goes to the heart of the category of powers for which the *Hadley* Court found unconstitutional without a concomitant extension of the franchise: education and taxes. The de minimus characterization of these powers by the Third Circuit is out of step with both *Hadley* and the true holding of *Holt*. The Boonton Board has exclusive power over the critical high school education of Lincoln Park residents. It hires and fires

teachers, disciplines students, sets the curricula, etc. Moreover, the operating budget for the high school is passed on to Lincoln Park on a *pro rata* per student basis which must be paid out of the tax levees imposed on Lincoln Park residents.

Likewise, the Third Circuit's focus on the so-called geographical boundaries between Lincoln Park and Boonton does not take into account a long line of cases that ignore political subdivisions and focus on the political subdivision's jurisdiction in order to remedy constitutional violations. In *Evans v. Cornman*, 398 U.S. 419 (1970), the Supreme Court determined that persons living on the grounds of a federal enclave in Maryland could not be denied the right to vote in Maryland elections simply because they lived on "federal property" and were not "residents" as defined under Maryland law. The Court recognized that plaintiffs had an equal stake to that of other Maryland residents, were subject to traditional, vital governmental functions and were therefore entitled to an equal franchise.[2] *Id.* at 426.

As Chief Justice Burger stated in *Milliken v. Bradley*, 418 U.S. 717, 744 (1974), "no state law is above the Constitution. School district lines and the present laws with respect to local control, are not sacrosanct and if they conflict with the Fourteenth Amendment federal courts have a duty to prescribe appropriate remedies." *See also Reynolds v. Sims*, 377 U.S. 533 (1964) (invalidating voting districts based in part on the existing historical geographic boundaries of Alabama counties); *Haney v. County Bd. Of Educ. Of*

2. Indeed, with respect to high school issues the geographical area governed by the Boonton Board of Education encompasses *both* Lincoln Park and Boonton.

Sevier County, Ark., 410 F.2d 920 (8th Cir. 1969) ("Political subdivisions of the state are mere lines of convenience for exercising divided governmental responsibilities. They cannot serve to deny federal rights."); *Jenkins v. Township of Morris School Dist.*, 58 N.J. 483, 500 (1971) ("political subdivisions of the states whether they be counties, cities or whatever are not sovereign entities and may readily be bridged when necessary to vindicate federal constitutional rights and policies.").

Certification should be granted to follow longstanding precedent, to correct voting rights imbalances and to resolve a glaring constitutional defect in the Send-Receive Statute. Such imbalances have long been the subject of judicial intervention. *See, e.g., Baker v. Carr*, 396 U.S. 186 (1962); *Gray v. Sanders*, 372 U.S. 368 (1963) ("[H]ow can one person be given twice or ten times the voting power of another person?"); *Reynolds v. Sims*, 377 U.S. 533 (1964) ("Diluting the weight of voters because of place of residence impairs the basic constitutional rights under the Fourteenth Amendment just as insidious discriminations based upon factors such as race or economic status.").

Moreover, the Third Circuit decision in the case at hand may prove disruptive of the proportional representation under which New Jersey regional school districts operate. In *Marlboro Township Board of Education of Freehold Regional High School*, 992 F. Supp. 756 (D.N.J. 1997), the impact of New Jersey's statutory requirement that each sending district in a regional school district have at least one full vote, regardless of population, was examined. The District Court found that this requirement led to disproportionate voting power. The district court noted that it is well accepted that education is a traditional vital governmental function whose trustees act as governmental officials. *Id.* at 764. Since the "one

municipality — one vote" scheme was grossly disproportionate to the population, the Court held the scheme to be unconstitutional. In a subsequent opinion weighted voting was approved as a method of constitutional compliance. *Township of Marlboro v. Board of Education of Freehold Regional High School*, 9 F. Supp. 2d 500 (D.N.J. 1998).[3]

This case involves one political body, the Boonton Board of Education, which controls the education of both Lincoln Park and Boonton high school students. It has the right and obligat*ion inter alia*, to set curriculum and educational policies for public high school students who are residents of Lincoln Park and of Boonton. It has the power to cause taxpayers of both towns to raise the monies necessary for the operating costs at the high school. It is clearly an entity where power and authority cuts across the geographic boundaries of Boonton, and insofar as high school matters are concerned, encompasses with its authority the Town of Lincoln Park. As the Board of Education of the Town of Boonton has Lincoln Park representation on it, albeit woefully disproportionate, Judge Hochberg was not applying the principle of "one person, one vote" across geographical/political boundaries of its current and existing authority and representation. Her decision simply apportions representation on high school issues fairly, in accordance with the population affected.

Granting the requested Writ of Certification is necessary to reconcile the holdings of *Hadley* and *Holt* and clarify and vindicate this all important principle of one person-one vote in this context.

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3. While not directly overruling *Township of Marlboro*, the Third Circuit's decision in the case at hand certainly casts doubt on its legal underpinnings.

CONCLUSION

For all of the foregoing reasons, the Petition for a Writ of Certiorari should be granted in this case.

Respectfully submitted,

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APPENDIX

APPENDIX A — OPINION AND ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT DATED AND FILED AUGUST 2, 2002

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Nos. 01-3478/3496/3505

PATRICK C. ENGLISH

v.

THE BOARD OF EDUCATION OF THE TOWN OF BOONTON; *WILLIAM L. LIBRERA, Commissioner of the New Jersey Department of Education

Board of Education of Town of Boonton,
Appellant in Nos. 01-3478/01-3505

**THE BOARD OF EDUCATION OF LINCOLN PARK,
Intervenor

(* Pursuant to F.R.A.P. 43(c))

(** Pursuant to the Court's Order dated 9/24/01)

Appendix A

PATRICK C. ENGLISH

v.

THE BOARD OF EDUCATION OF THE TOWN OF BOONTON; * WILLIAM L. LIBRERA, Commissioner of the New Jersey Department of Education

William L. Librera,

Appellant in No. 01-3496

** THE BOARD OF EDUCATION OF LINCOLN PARK,
Intervenor

(* Pursuant to F.R.A.P. 43(c))

(** Pursuant to the Court's Order dated 9/24/01)

On Appeal from the United States District Court
for the District of New Jersey
(D.C. Civ. No. 00-cv-05394)
District Judge: Honorable Faith S. Hochberg)

Argued: April 25, 2002

Before: BECKER, *Chief Judge*, SCIRICA and RENDELL, *Circuit Judges*.

(Filed: August 2, 2002)

Appendix A

OPINION OF THE COURT

BECKER, *Chief Judge.*

Lincoln Park is a New Jersey municipality that has elected to fulfill its statutory obligation to educate its high school students by entering into what is known as a "send-receive" relationship with neighboring Boonton through which it sends its pupils to Boonton High School and pays to the Boonton School District a tuition that reflects the "actual cost" of the students enrolled. N.J.S.A. § 18A:38-19. Under New Jersey's statute regulating send-receive relationships, N.J.S.A. § 18A:38-8.2, Lincoln Park is entitled to only one representative on the ten-member Boonton Board of Education ("Board"). Because Lincoln Park students constitute 52% of the Boonton High School population and Lincoln Park's population as a whole amounts to 56% of the combined populations of the two towns, the plaintiff, Patrick English, a resident of Lincoln Park, maintains that relegating Lincoln Park to only one vote on the Boonton Board deprives him of his constitutional right, under the Equal Protection Clause of the Fourteenth Amendment, U.S. Const. amend. XIV, § 1, to proportional representation.

Upon cross-motions for summary judgment, the District Court agreed with English, and entered an order granting summary judgment against defendants the Boonton Board and the State Commissioner of Education. *See English v. Bd. of Educ. of Town of Boonton*, 135 F. Supp. 2d 588 (D.N.J. 2001) [hereinafter "*English I*"]. The Court ordered Lincoln Park's representation increased to four (out of thirteen), with the Lincoln Park delegation's vote on matters affecting

the high school weighted by a factor that would give Lincoln Park influence on the Board congruent with its share of the high school population. *See English v. Bd. of Educ. of Town of Boonton*, 161 F. Supp. 2d 344, 347-48 (D.N.J. 2001) [hereinafter "*English II*"].

In reviewing the District Court's decision, we are called upon to consider the extent of the constitutional principle of "one person, one vote." Under this doctrine, "each qualified voter must be given an equal opportunity to participate in [an] election, and when members of an elected body are chosen from separate districts, each district must be established on a basis that will ensure, as far as is practicable, that equal numbers of voters can vote for proportionally equal numbers of officials." *Hadley v. Junior Coll. Dist. of Metro. Kansas City, Mo.*, 397 U.S. 50, 56 (1970).

Although requiring equality among eligible voters, "one person, one vote" jurisprudence recognizes that certain restrictions on voter eligibility are valid. In *Holt Civic Club v. City of Tuscaloosa*, 439 U.S. 60 (1978), the Supreme Court held "that a government unit may legitimately restrict the right to participate in its political processes to those who reside within its borders." *Id.* at 68-69. Such geography-based restrictions on the franchise have been upheld as valid when a municipality exercises "extraterritorial" powers over individuals outside its boundaries; the exercise of "extraterritorial" powers does not, according to *Holt*, require a "concomitant extraterritorial extension of the franchise." *Id.* at 69. Because valid geography-based restrictions on voting do not offend the principle of "one person, one vote," a court need not subject them to strict scrutiny; rather, the restrictions must

only "bear some rational relationship to a legitimate state purpose." *Id.* at 70.

In our view, *Holt* mandates the conclusion that strict scrutiny does not apply and that Lincoln Park residents can claim no constitutional right to proportional representation on the Boonton Board. As is obvious, the residents of Lincoln Park do not reside within the geographic district that is responsible for electing the members of the Boonton Board; the Boonton Board, therefore, merely exercises extraterritorial power over Lincoln Park. Because Lincoln Park maintains its own separate board of education that controls the K- 8 education of its students, this is not a case in which the Boonton School District "exercis[es] precisely the same governmental powers over residents of surrounding . . . territory as it does over those residing within its corporate limits." *Id.* at 72 n.8. Rather, the Boonton Board is in a position to govern only four of thirteen years of a Lincoln Park student's public education, and thereby exercises limited extraterritorial powers.

Furthermore, under New Jersey's send-receive legislative scheme, it is possible that Lincoln Park may one day sever its send-receive relationship with Boonton. As a result, the residents of Lincoln Park cannot be said to possess the same stake as Boonton residents in Board decisions that affect the Boonton School District in the long term, such as capital improvements. At bottom, we conclude that the New Jersey send-receive scheme as applied to Lincoln Park does not violate the principle of "one person, one vote."

English maintains, however, that even if we decline to review the Lincoln Park-Boonton arrangement under strict scrutiny, the statutory scheme's allocation of only one vote to Lincoln Park does not survive even the more deferential rational basis review. We disagree, for we think that the allocation to Lincoln Park of only one representative on the Boonton Board, the type of complex judgment that a state legislature is entitled to make, does, in fact, "bear some rational relationship to a legitimate state purpose." *Id.* at 70. Accordingly, we will reverse the order of the District Court and remand with directions to grant summary judgment to the defendants.

I. Facts and Procedural History

Under New Jersey law, Lincoln Park has an obligation to educate, at its own expense, all persons, between the ages of five and twenty who are domiciled within the district. N.J.S.A. § 18A:38-1. New Jersey law, however, does not require that Lincoln Park construct and maintain its own schools in order to fulfill this obligation. Rather, Lincoln Park, like any New Jersey school district, may enter into a send-receive relationship with another district whereby it sends its pupils to the receiving district's schools for one grade or more, N.J.S.A. § 18A:38-8, in return for a tuition payment that does not exceed the "actual cost" of the students enrolled, N.J.S.A. § 18A:38-19, with "actual cost" defined in detail by the New Jersey Administrative Code. *See* N.J. Admin. Code § 6A:23-3.1.

Over fifty years ago, rather than build its own high school, Lincoln Park elected to enter into a send-receive relationship with neighboring Boonton for the education of

its high school students, and that relationship has continued to the present day. Although the Lincoln Park-Boonton relationship has persisted for more than half a century, it has not been without its share of acrimony, as there have been at least four major lawsuits between the districts on topics ranging from the Lincoln Park representative's right to receive information to overcharging of tuition to Lincoln Park. *See English I*, 135 F. Supp. 2d at 591.

According to New Jersey law, when a sending district's students "comprise less than 10 percent of the total enrollment of the pupils in the grades of the receiving district in which the pupils of the sending district will be enrolled, the sending district shall have no representation on the receiving board of education." N.J.S.A. § 18A:38-8.2(a)(1). When, however, the sending district's pupils "comprise at least 10 percent of the total enrollment of the pupils in the grades of the receiving district in which the pupils of the sending district will be enrolled," the sending district's board of education is entitled to appoint one member to serve on the receiving district's board. N.J.S.A. § 18A:38-8.2(a)(2). The level of representation of the sending district remains fixed at one representative regardless of whether students from the sending district constitute 10 % or 90 % of the relevant population of the receiving district's schools. As a result of a political compromise, the state legislature has carved out one exception to this rule, which is explained in the margin.[1]

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1. New Jersey law provides that sending districts in "sixth class" counties — counties bordering the Atlantic Ocean that have a population of less than 125,000, *see* N.J.S.A. § 40A:6-1 — which have "resident enrollment greater than 2,400 pupils but less than

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Appendix A

As noted above, for the 2001-02 school year, Lincoln Park provided 52 % of the high school's combined student population. Additionally, according to the most recent census data, Lincoln Park's total population amounts to 56 % of the combined population of the two towns but, despite its larger population, Lincoln Park, as per N.J.S.A. § 18A:32-8.2, is entitled to only one representative on the Boonton Board. Moreover, state law limits the vote of the Lincoln Park representative on the Boonton Board to the following issues:

a. Tuition to be charged the sending district by the receiving district and the bill lists or contracts for the purchase, operation or maintenance of facilities, equipment and instructional materials to be used in the education of the pupils of the sending district;

b. New capital construction to be utilized by sending district pupils;

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2,600 pupils and which send[ ] its pupils in grades 9 through 12 to a school district in the same county pursuant to N.J.S.A. 18A:38-8 [the send-receive provision]," are entitled to up to three representatives on the receiving district's board if students from the sending district make up at least 40 % of the total enrollment of grades 9 through 12. N.J.S.A. § 18A:38-8.4. As the anomalous nature of this provision suggests, this exception was adopted to benefit one particular sending school district, Upper Township. The legislative history indicates that the provision was passed in order to effectuate an agreement between Upper Township and the receiving district, Ocean City, by which the two agreed to increase Upper Township's representation on Ocean City's school board from one to three representatives. *See* S.Doc. No. 2212, 208th Sess., at 3 (N.J. 1999); A.Doc. No. 3499, 208th Sess., at 3 (N.J. 1999).

c. Appointment, transfer or removal of teaching staff members providing services to pupils of the sending district, including any teaching staff member who is a member of the receiving district's central administrative staff; and

d. Addition or deletion of curricular and extracurricular programs involving pupils of the sending district.

N.J.S.A. § 18A:38-8.1.

State law mandates that neither the sending nor the receiving district may sever its send-receive relationship without the approval of the State's Commissioner of Education ("Commissioner"). N.J.S.A. § 18A:38-13. To obtain approval, the district seeking to withdraw from the relationship must submit a feasibility study addressing the educational and financial implications of severance and the effect on the racial composition of the student population of each of the districts. *Id.* If the Commissioner concludes that "no substantial negative impact" will result from the severance, he or she "shall grant" the severance. *Id.* Despite the grievances of some of its residents, Lincoln Park has apparently never officially sought to withdraw from its send-receive relationship with Boonton.[2]

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2. Although this case concerns a send-receive relationship, it is worth noting that there is another option by which two municipalities can pool educational resources under New Jersey law: the formation of a "regional" school district. *See* 18A:13-1 *et seq.* A "regional" school district can be either "all purpose," which means that it is responsible for educating students of all ages within the

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Appendix A

Plaintiff Patrick English, a resident of Lincoln Park, brought suit in the District Court for the District of New Jersey against the Boonton Board and the Commissioner of the New Jersey Department of Education. Although not an original plaintiff, the Lincoln Park School Board was permitted by the District Court to intervene in the litigation

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district, or "limited purpose," means that it is responsible for educating students of certain grade levels only. *See* N.J.S.A. § 18A:13-2. Limited purpose regional districts are often formed to provide high school facilities for the children of two or more towns that do not have high schools of their own. In such instances, residents of the towns making up the regional district will vote for two school boards — one for their municipality's own K-8 district, and another for the regional school district, which would govern only high school affairs.

Funding for regional school districts is apportioned on the basis of relative municipal property values, pupil enrollments from each municipality, or a combination thereof. *See* N.J.S.A. § 18A:13-23. As for governance, New Jersey law requires that a regional school board consist of nine members, and that each town within the regional district have at least one representative on the board. *See* N.J.S.A. § 18A:13-8. If there are less than nine towns in the district, the extra seats on the board are distributed on the basis of population. *See id.* Like the send-receive representation scheme at issue in the case at bar, the regional district representation scheme has also been attacked as a violation of the "one person, one vote" doctrine in instances where a constituent municipality receives less representation on the regional school board than it would receive if representation were apportioned on the basis of population alone. *See, e.g., Township of Marlboro v. Bd. of Educ. of Freehold Reg'l High Sch.*, 992 F. Supp. 756 (D.N.J. 1998) (finding "one person, one vote" violation where town that made up 20 % of the regional district's combined population received only one vote on nine-person regional school board).

on English's behalf.[3] The plaintiffs alleged that N.J.S.A. § 18A:32-8.2's allocation of one representative to a sending district on the receiving district's board was unconstitutional as applied because it deprived English and other residents of Lincoln Park of their right to proportional representation. Upon cross-motions for summary judgment, the District Court granted summary judgment for the plaintiffs, concluding that the constitutional principle of "one person, one vote" had been violated by N.J.S.A. § 18A:32-8.2 as applied to Lincoln Park. *English I*, 135 F. Supp. 2d at 594. The Court explicitly noted that it was not striking down the statute as unconstitutional on its face, for it noted that in some instances the statute's allocation of one vote to a sending district might result in representation that comports with the "one person, one vote" principle. *Id.* at n.9.

As an interim remedy for the constitutional violation (the Court made clear its belief that it was for the state legislature to fashion a long-term solution), the Court ordered that Lincoln Park's representation on the Boonton Board be increased from one representative (out of ten) to four (out of thirteen). *English II*, 161 F. Supp. 2d at 347. Moreover, for the matters enumerated in § 18A:38-8.1 that relate only to high school affairs (i.e., not matters that concern the school district as a whole such as the selection of members of the district's central administrative staff), the Court ordered that the vote of the Lincoln Park delegation be weighted by a factor of 2.5, which would have the effect of giving the

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3. For the sake of simplicity, we will refer to the individual plaintiff — English — and the intervening Lincoln Park School Board collectively as "the plaintiffs," even though the latter is not, strictly speaking, a "plaintiff" in this litigation.

Lincoln Park representatives control over 52.6 % of the vote, a number which the District Court thought would "achieve, as nearly as practicable, representation proportionate to Lincoln Park and Boonton's respective proportion of the combined population of the two districts." *Id.* at 347-48. With respect to the matters enumerated in § 18A:38-8.1 that do have a district-wide impact, the Court ordered that the Lincoln Park representatives' votes be weighted by a factor of 0.7, which would bring the Lincoln Park representation to "approximately 23%," a figure that represents the proportion of total students in the Boonton School District who are from Lincoln Park. *Id.* at 348. The defendants have appealed both the District Court's declaration of N.J.S.A. § 18A:38-8.2 as unconstitutional as well as the Court's remedy.

This Court has jurisdiction pursuant to 28 U.S.C. §§ 1291.[4] Our review of a district court's grant of summary judgment

4. The Boonton Board has argued that we have no jurisdiction over this case because the plaintiff's claims are not yet ripe. Because the Lincoln Park School Board has never officially sought to withdraw from its relationship with Boonton, the Boonton Board maintains that Lincoln Park must first exhaust its administrative remedies — seeking severance through the Commissioner's office as per N.J.S.A. § 18A:38-13 — before this suit can proceed. We disagree. This lawsuit has not been brought by the Lincoln Park School Board (although the Board has intervened on behalf of the plaintiff), but rather by a resident of Lincoln Park suing in his individual capacity. As an individual, English has no power to seek severance of the Lincoln Park-Boonton relationship. Moreover, while English's suit certainly has consequences for all of Lincoln Park's residents, the suit is, at its core, a claim to vindicate not the collective rights of Lincoln

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is plenary. *See Beers-Capitol v. Whetzel*, 256 F.3d 120, 130 n.6 (3d Cir. 2001). Summary judgment is proper if there is no genuine issue of material fact and if, viewing the facts in the light most favorable to the non-moving party, the moving party is entitled to judgment as a matter of law. *See* F.R.C.P. 56(c); *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986).

II. Discussion

A. The Constitutional Principle of "One Person, One Vote"

The history of the Fourteenth Amendment's "one person, one vote" doctrine begins with *Baker v. Carr*, 369 U.S. 186 (1962), where the Supreme Court rejected the long-held notion that questions of legislative apportionment were political questions outside the purview of the judiciary. *Baker* paved the way for a series of successful "one person,

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Park residents, but the *individual's* right under the Equal Protection Clause to "one person, one vote." *See Shelley v. Kraemer*, 334 U.S. 1, 22 (1948) ("The rights created by the first section of the Fourteenth Amendment are, by its terms, guaranteed to the *individual*. The rights established are *personal* rights.") (emphases added). In other words, even if the Lincoln Park School Board were entirely content with the terms of its send-receive relationship with Boonton (which, apparently, it is not, as evidenced by its intervention on English's behalf), English would still be entitled to bring suit to vindicate his individual rights as a voter. *See, e.g., Baker v. Reg'l High Sch. Dist. No. 5*, 520 F.2d 799 (2d Cir. 1975) (court heard suit of individual resident alleging violation of "one person, one vote" principle despite fact that the district in which the plaintiff resided had consented to the joint board of education's representation scheme).

one vote" challenges to state and local elective systems, including the elections of state legislators, *Reynolds v. Sims*, 377 U.S. 533 (1964), county officials, *Avery v. Midland County*, 390 U.S. 474 (1968), members of a local school board, *Kramer v. Union Free Sch. Dist. No. 15*, 395 U.S. 621 (1969), and trustees of a community college, *Hadley v. Junior Coll. Dist. of Metro. Kansas City, Mo.*, 397 U.S. 50 (1970).

The "one person, one vote" principle requires that "each qualified voter must be given an equal opportunity to participate in th[e] election, and when members of an elected body are chosen from separate districts, each district must be established on a basis that will ensure, as far as is practicable, that equal numbers of voters can vote for proportionally equal numbers of officials." *Id.* at 56. When a challenged elective system denies an equal voice to each resident, the scheme is reviewed under strict scrutiny, for "the general presumption of constitutionality afforded state statutes and the traditional approval given state classifications if the Court can conceive of a 'rational basis' for the distinctions made are not applicable." *Kramer*, 395 U.S. at 627-28.[5]

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5. An exception to this rule has been recognized in the case of the election of "certain functionaries whose duties are so far removed from normal governmental activities and so disproportionately affect different groups that a popular election . . . might not be required." *Hadley*, 397 U.S. at 56. In such "special interest elections," "the State may constitutionally disenfranchise residents who lack the required special interest in the subject matter of the election." *Holt*, 439 U.S. at 69. For instance, the Supreme Court upheld a scheme

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Appendix A

While proclaiming the importance of the "one person, one vote" right, the Supreme Court has also recognized that this right must operate within certain geographic boundaries. Obviously, it does not violate the principle of "one person, one vote" when residents of Idaho are denied the right to vote for the governor of New Jersey. Nor does it violate "one person, one vote" when the residents of Philadelphia, Pennsylvania's suburbs are denied the right to vote for the Mayor or City Council of Philadelphia, despite the fact that many decisions of the Philadelphia city government — such as those regarding taxes, transportation, parking, and cultural institutions — "inescapably affect individuals living immediately outside [Philadelphia's] borders," particularly those who work within the city limits. *Holt Civic Club v. City of Tuscaloosa*, 439 U.S. 60, 69 (1978). The Supreme Court has recognized, therefore, "that a government unit may legitimately restrict the right to participate in its political processes to those who reside within its borders," despite the fact that a government unit's decisions may inevitably have an effect — sometimes a very large effect — on persons who reside outside the unit's geographic limits. *Id.* at 68-69.

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that apportioned votes for the members of a water storage district board not on a "one person, one vote" basis, but rather on the basis of the value of property owned. *See Salyer Land Co. v. Tulare Lake Basin Water Storage Dist.*, 410 U.S. 719 (1973). The Court has also expressly left open the question of whether school board elections can be limited to a subset of a school district's general population that is "primarily interested in school affairs." *Kramer*, 395 U.S. at 632.

Appendix A

B. *Holt* and the Validity of Geographical Restrictions on the Franchise

In *Holt*, the Supreme Court expressly recognized geographical limits on the "one person, one vote" principle. There the Court addressed the constitutionality of an Alabama statute that subjected Holt, an unincorporated community on the outskirts of the city of Tuscaloosa, to the city's "police jurisdiction," which meant that Holt was subject to Tuscaloosa's police and sanitary regulations and the criminal jurisdiction of Tuscaloosa's courts, as well as the city's power to license businesses, trades, and professions. Despite Tuscaloosa's exercise of "police jurisdiction" over Holt, the statute did not entitle Holt residents to vote in Tuscaloosa elections, an exclusion which was challenged as a violation of "one person, one vote."

In concluding that the scheme was constitutional, the Court distinguished prior cases in which a violation of the "one person, one vote" principle had been found as those where the franchise had been denied "to individuals who were physically resident within the geographic boundaries of the governmental entity concerned." *Id.* at 68. The court held that, because Holt residents lived outside the boundaries of Tuscaloosa, the governmental unit at issue, "one person, one vote" was not implicated and the scheme needed to survive only rational basis review to be upheld. Applying rational basis review, the Court concluded that the scheme bore "some rational relationship to a legitimate state purpose," *id.* at 70, and upheld Tuscaloosa's extraterritorial exercise of municipal powers over Holt. *Id.* at 74-75.

The defendants contend that this case is controlled by *Holt* because English and the other residents of Lincoln Park, like the residents of Holt, reside outside "the geographic borders of the governmental entity concerned" — the Boonton School District. *Id.* at 68. Consequently, the defendants submit, although Lincoln Park residents, like the residents of Holt, are subject to the extraterritorial jurisdiction of another municipal entity — specifically, the Boonton Board's control over their children's high school education — they are not entitled to a proportionate vote in that entity's elections. Thus, the defendants argue, the principle of "one person, one vote" is not offended, and the state need not justify its representation scheme under strict scrutiny. *See Mixon v. Ohio*, 193 F.3d 389, 402 (6th Cir. 1999) (noting that when legislation "does not infringe on the right to vote, we examine the challenged statute under the rational basis standard").

The plaintiffs counter that the Supreme Court's holding in *Holt* is limited to instances in which a municipality exercises only "limited" extraterritorial power over non-residents. They submit that where a municipality exercises extensive powers over non-residents, as they contend is the case here, political subdivisions are mere formalities that ought not to stand in the way of the vindication of federal constitutional rights, and, accordingly, the franchise must be extended extraterritorially to non-residents whose interests are affected by the decisions of another governmental entity.

The plaintiffs rely on a 1975 decision of the United States Court of Appeals for the Eighth Circuit, *Little Thunder v. South Dakota*, 518 F.2d 1253 (8th Cir. 1975). There the Court was called upon to review the constitutionality of a South

Dakota statutory scheme under which residents of the state's "unorganized" counties were excluded from participating in the elections of "organized" county officials who nevertheless wielded the same powers over the "unorganized" counties as they did over the "organized" counties that elected them. *Id.* at 1254-55. Although South Dakota argued that the non-residents' exclusion was justified as a legitimate geographic residency requirement, the Court of Appeals rejected this view as "too simplistic." *Id.* While the Court recognized a state's prerogative to impose geographic limits on the franchise, it cautioned that "those limits must bear a close relationship to the underlying interests of the parties affected in the results of the elective process." *Id.* at 1256. Because the "unorganized"/"organized" county residence distinction in voting rights did not "result from a substantial difference in the[ ] interests [of the residents of each type of county] in the election of county officials," the Court held that the scheme was an unconstitutional violation of the "one person, one vote" principle. *Id.*

We agree with the plaintiffs and the Eighth Circuit that a rigidly formalistic approach to geography in "one person, one vote" jurisprudence would be "too simplistic," as it may result in upholding "entirely arbitrary" or "irrational[ ]" distinctions in citizens' voting rights, *Holt*, 439 U.S. at 87 (Brennan, J., dissenting). Although the *Holt* Court at times seemed to endorse unequivocally the validity of geographic restrictions on the franchise, *see id.* at 68-69 ("[O]ur cases have uniformly recognized that a government unit may legitimately restrict the right to participate in its political processes to those who reside within its borders."), the Court acknowledged that in "a situation in which a city has annexed

outlying territory in all but name, and is exercising precisely the same governmental powers over residents of the surrounding . . . territory as it does over those residing within its corporate limits," constitutional problems may well arise where the residents of the outlying territory have no say in the election of the city's officials. *Id.* at 72 n.8 (citing *Little Thunder*). Moreover, the Court took care to observe that although the interests of Holt residents were undoubtedly affected to a large degree by the powers exercised by Tuscaloosa's city government, Tuscaloosa's powers over Holt did not include certain "vital and traditional authorities of cities and towns," such as zoning, the power to levy ad valorem taxes, and eminent domain. *Id.* at 72 n.8.[6]

However, even assuming that *Little Thunder* is apposite (in fact we think it factually distinguishable), the plaintiffs do not acknowledge the extent to which the Supreme Court's opinion in *Holt*, issued three years after *Little Thunder*, cut back on the Eighth Circuit's analytical technique of taking non-residents' "interests" into account. In particular, whereas the *Little Thunder* Court seemed to conclude that residency requirements are permissible only "when they are designed to insure that only voters who have a substantial interest in the outcome of elections will participate," 518 F.2d at 1256, the Supreme Court in *Holt* recognized that territorial restrictions

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6. Justice Stevens elaborated on this point in his concurring opinion by noting the "limited" nature of the extraterritorial powers exercised by Tuscaloosa. *Holt*, 439 U.S. at 77. Moreover, Justice Stevens noted that even though Holt residents could not vote in Tuscaloosa's municipal elections, they were entitled to vote for county officials, and were thereby "not without any voice in the election of the officials who govern their affairs." *Id.* at 77.

on the franchise may be valid even where the decisions of a municipality have a "heav[y] impact" on non-residents excluded from its political processes. 439 U.S. at 69-70.

It seems to us, therefore, that the Court in *Holt* took care to eschew a rigidly formalistic reliance on geography in assessing the constitutionality of a territorial voting restriction, but at the same time required that something more than what the *Little Thunder* Court termed the "substantial interest[s]" of the non-residents to have been affected for a territorial restriction to violate the principle of "one person, one vote." We read *Holt* as meaning that strict scrutiny will be applied to the exclusion of non-residents from the elections of a particular governmental entity only when that unit of government exercises a level of control over the non-residents' lives close to or equal to that which it exercises over those who actually reside within its borders. However, the mere fact that a municipality's actions may have an impact — even a substantial impact — on non-residents does not entitle those non-residents to vote in the municipality's elections. *See Holt*, 439 U.S. at 69-70 (noting that despite the fact that a city's decisions may have "dramatic extraterritorial effects" on non-residents, those non-residents are not entitled to vote in the city's elections).

Applying this tempered view of *Holt*, we are constrained to hold that the residents of Lincoln Park have no right to vote in the election of Boonton's School Board. This is not a case in which the Boonton Board "exercis[es] precisely the same governmental powers over residents of [Lincoln Park] as it does over those residing within its [district's] limits." *Id.* at 72 n.8. Lincoln Park residents are subject to the

extraterritorial powers of the Boonton Board only with respect to their high school-aged children. For matters concerning K-8 education, the residents of Lincoln Park exercise exclusive control through their own school board elected solely by Lincoln Park residents. Moreover, the Boonton Board's control over high school education is only one of its many responsibilities affecting the residents of Boonton. The Board is also responsible for the district's K-8 educational program, as well as matters that affect the district as a whole, such as school facilities and the district's central administrative staff.

The plaintiffs contend that *Holt* is distinguishable because this case concerns education, "a vital government function," *Hadley*, 397 U.S. at 56, whereas *Holt* involved less important governmental services like police protection and business licensing. *See Holt*, 439 U.S. at 77 (Stevens, J., concurring) (noting that the extraterritorial powers of Tuscaloosa over the residents of Holt were "limited" in part because Tuscaloosa exercised no power over Holt's schools). While we do not gainsay that education is a governmental function of the utmost importance, *see Brown v. Bd. of Educ.*, 347 U.S. 483, 493 (1954) (noting that "education is perhaps the most important function of state and local governments"), we doubt the viability of that distinction in this context. At all events, we think that the extraterritorial power over education exercised by the Boonton Board is itself "limited" for the reasons described above: the Boonton Board controls only four of the thirteen years of a Lincoln Park child's education and Lincoln Park possesses its own school board elected exclusively by Lincoln Park residents for the governance of K-8 affairs. Moreover, Lincoln Park residents

are not without any voice in the governance of Boonton High, for state law, as explained above, entitles the Lincoln Park Board to appoint a representative to the Boonton Board. That person may speak at Board meetings to convey Lincoln Park's view. He or she also has a vote on matters that primarily affect the high school. *See* N.J.S.A. § 18A:38-8.1.

Additionally, New Jersey has legitimate reasons for limiting the representation of Lincoln Park in the Boonton Board's decisions. As noted above, under New Jersey law there is always the possibility that Lincoln Park, as a sending district, might sever its relationship with Boonton. *See* N.J.S.A. § 18A:38-13. As a result, it can fairly be said that Lincoln Park residents do not have the same vested interest in the long-term affairs of the Boonton school district — such as capital improvements, employee pension plans, and other long-term commitments — as do Boonton residents. Moreover, as discussed earlier, some of the items on which a sending district's representative is entitled to vote affect more than just the school that the district's students attend. *See, e.g.*, N.J.S.A. § 18A:38-8.1(d) (selection "of the receiving district's central administrative staff"). It makes sense, therefore, for New Jersey to limit the power of the sending district's representative so as to preserve the receiving district's control over matters that affect the school district as a whole.

Perhaps in an ideal system of government, the residents of Lincoln Park would be entitled to a level of representation on the Boonton Board that is exactly proportional to their level of "interest" in the Board's functions, if such a figure could be calculated. Indeed, the District Court, through its

remedy's mathematical formula for determining different levels of representation for Lincoln Park as to different issues addressed by the Boonton Board, appears to have attempted to achieve such precision. The Constitution, however, does not require that a system of government be "the soundest or most practical form of internal government possible" from "a political science standpoint." *Holt*, 439 U.S. at 73-74. Rather, imprecision in democratic representation is tolerated, so long as the basic principles of "one person, one vote," described above, are not offended.

While well-intentioned, the District Court's remedy has the potential to involve the judiciary in what is an essentially legislative role. The complex policy decisions involved in apportioning representation where a school board exercises limited power over students from another district and where the relationship between a sending and receiving district is far from permanent are decisions best left to a legislature. *See Reynolds*, 377 U.S. at 620-625 (Harlan, J., dissenting) (arguing that questions of democratic apportionment are best left to the legislature). This is especially so in the context of education policy, an area in which the Supreme Court has repeatedly admonished the judiciary to be wary of intervention. As the Court observed in *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1 (1973):

> Education . . . presents a myriad of intractable economic, social, and even philosophical problems. The very complexity of the problems of financing and managing a statewide public school system suggests that there will be more than one constitutionally permissible method of

> solving them, and that, within the limits of rationality, the legislature's efforts to tackle the problems should be entitled to respect. . . . In such circumstances, the judiciary is well advised to refrain from imposing on the States inflexible constitutional restraints that could circumscribe or handicap the continued research and experimentation so vital to finding even partial solutions to educational problems and to keeping abreast of ever-changing conditions.

Id. at 42-43 (internal quotation marks and citations omitted).

Indeed, the very complexity of the District Court's remedy illustrates why intervention in this area is better suited to the state legislature than to the judiciary. Under the Court's remedy, as discussed above, four members of the Lincoln Park Board would be entitled to sit on a thirteen-member Boonton Board with the votes of the Lincoln Park delegation weighted by a factor of 2.5 in matters affecting only the high school and 0.7 in matters affecting the district as a whole. This remedy threatens to make a math lesson out of every meeting of the Boonton Board. While the Court proffered its remedy as only an interim solution pending action by the New Jersey state legislature (which is something that the Court could neither compel nor, with any degree of confidence, expect), the rationale of the Court's opinion and its remedy — which seem to require that Lincoln Park's representation on the Boonton Board comport almost exactly to its share of the student population — appear to leave the state legislature little room within which to maneuver.

For all of these reasons, we are satisfied that N.J.S.A. § 18A:38-8.2 as applied to Lincoln Park does not violate the principle of "one person, one vote." Consequently, we need not review the statute under strict scrutiny.[7]

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7. In urging us to reverse the District Court, the defendants stressed in their briefs and at oral argument what they describe as the "voluntary" nature of the Lincoln Park-Boonton relationship. By "voluntarily" deciding to enter the send-receive relationship with Boonton, the defendants claim, Lincoln Park cannot now claim to be dissatisfied with the terms of the send-receive agreement, for Lincoln Park residents have made the decision that they would rather send their children to another district's high school and pay tuition than build a high school of their own, even if this arrangement means that some degree of autonomy over their children's high school education will be sacrificed.

We are satisfied that there has been no violation of "one person, one vote" for the reasons stated in the text, and do not rely on the defendants' "voluntariness" argument. This argument, like the defendants' argument regarding ripeness, *see supra* note 4, confuses the collective nature of action taken by the Lincoln Park School Board with the *individual* right asserted by English in this litigation. The case law on "one person, one vote" makes clear that English's equal protection rights may not be sacrificed merely because a majority of his fellow citizens have consented to sacrifice their own rights. *See Lucas v. Forty-Fourth Gen. Assembly of Colo.*, 377 U.S. 713, 736-37 (1964) ("An individual's constitutionally protected right to cast an equally weighted vote cannot be denied even by a vote of a majority of a State's electorate. . . . ") ("A citizen's constitutional rights can hardly be infringed simply because a majority of the people choose that it be."); *see also Holt*, 439 U.S. at 76 (Stevens, J., concurring) (noting that neither a municipality nor a state "can consent to a waiver of the constitutional rights of its constituents in the election process"); *Baker v. Reg'l High Sch. Dist.*, 520 F.2d 799

(Cont'd)

Appendix A

C. Rational Basis Review

Having concluded that the principle of "one person, one vote" is not offended, we must ask only whether N.J.S.A. § 18A:38-8.2 as applied to Lincoln Park "bear[s] some rational relationship to a legitimate state purpose." *Holt*, 439 U.S. at 70. "Rational relationship" review is, of course, a very deferential standard, under which "a law will be sustained . . . even if the law seems unwise or works to the disadvantage of a particular group, or if the rationale for it seems tenuous." *Romer v. Evans*, 517 U.S. 620, 632 (1996). So long as strict scrutiny is not implicated, states enjoy significant latitude in the design of local governments, for "the Constitution and this Court are not roadblocks in the path of innovation, experiment, and development among units of local govern-ments." *Avery*, 390 U.S. at 485. Indeed, this deference to state legislative judgment is particularly appropriate in the realm of educational policy, where, as noted, "[t]he very complexity of the problems of financing and managing a statewide public school system suggests that 'there will be more than one constitutionally permissible method of solving them' and that, within the limits of rationality, 'the legislature's efforts to tackle the problems' should be entitled to respect." *Rodriguez*, 411 U.S. at 42 (quoting *Jefferson v. Hackney*, 406 U.S. 535, 546-47 (1972)).

(Cont'd)

(2d Cir. 1975) (finding violation of "one person, one vote" principle despite fact that the district in which the plaintiff resided had consented to the joint board of education's representation scheme); *Barnes v. Bd. of Dirs.*, 418 F. Supp. 845 (D. Vt. 1978) (same); *Leopold v. Young*, 340 F.Supp. 1014 (D. Vt. 1972) (same).

Applying this deferential standard of review, we conclude that the application of N.J.S.A. § 18A:38-8.2 to Lincoln Park is not irrational. In allocating one representative to sending districts that provide more than 10 % of a receiving school's population, New Jersey seeks to allow a sending district some voice — but only a modest voice — in the receiving district's affairs. For the reasons described above, New Jersey has legitimate reasons for limiting the input of a sending district in the receiving district's board's decisions. As discussed, a sending district, at least in theory, may at some point sever its relationship with the receiving district. Consequently, Lincoln Park's residents do not have the same vested interest in the long-term affairs of the Boonton school district as do Boonton residents. Moreover, as we earlier observed, some of the items on which a sending district's representative is entitled to vote affect more than just the school its district's students attend. *See, e.g.*, N.J.S.A. § 18A:38-8.1(d) (selection "of the receiving district's central administrative staff"). In sum, we do not consider it irrational for New Jersey to limit the power of the sending district's representative so as to preserve the receiving district's control over matters that affect the school district as a whole.

We recognize that under N.J.S.A. § 18A:38-8.2, a sending district that provides 90 % of the students in particular grades of a receiving district will be entitled to the same number of representatives on the receiving district's school board — one — as a sending district that provides only 10 % of the students at particular levels. However, the mere fact that N.J.S.A. § 18A:38-8.2's representation scheme might have been crafted with more precision "[f]rom a political science standpoint" does not mean that the current system is

irrational, for "this Court does not sit to determine whether [New Jersey] has chosen the soundest or most practical form of internal government possible." 439 U.S. at 73-74. Rather, because we conclude that the New Jersey send-receive representation scheme "bear[s] some rational relationship to a legitimate state purpose," we will uphold it as applied to Lincoln Park. *Id.* at 70; *accord Hawkins v. Johanns*, 88 F. Supp. 2d 1027 (D. Neb. 2000) (upholding similar send-receive scheme under rational basis review despite fact that sending district received no representation on the receiving district's school board).

For the foregoing reasons we will reverse the order of the District Court granting summary judgment to the plaintiff, and remand with directions that the Court grant the defendants' cross-motions for summary judgment.

A True Copy:
Teste:

Clerk of the United States Court of Appeals
for the Third Circuit

Appendix A

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 01-3478/3496/3505

PATRICK C. ENGLISH

v.

THE BOARD OF EDUCATION OF THE TOWN OF BOONTON; *WILLIAM L. LIBRERA, Commissioner of the New Jersey Department of Education

Board of Education of Town of Boonton,
Appellant in Nos. 01-3478/01-3505

**THE BOARD OF EDUCATION OF LINCOLN PARK,
Intervenor

(* Pursuant to F.R.A.P. 43(c))

(** Pursuant to the Court's Order dated 9/24/01)

Appendix A

PATRICK C. ENGLISH

v.

THE BOARD OF EDUCATION OF THE TOWN OF BOONTON; * WILLIAM L. LIBRERA, Commissioner of the New Jersey Department of Education

William L. Librera,
Appellant in No. 01-3496

** THE BOARD OF EDUCATION OF LINCOLN PARK,
Intervenor

(* Pursuant to F.R.A.P. 43(c))

(** Pursuant to the Court's Order dated 9/24/01)

On Appeal from the United States District Court
for the District of New Jersey
(D.C. Civ. No. 00-cv-05394)
District Judge: Honorable Faith S. Hochberg)

Argued: April 25, 2002

Before: BECKER, *Chief Judge*, SCIRICA and RENDELL, *Circuit Judges*.

JUDGMENT

This cause came on to be heard on the record from the United States District Court for the District of New Jersey and was agued by counsel on April 25, 2002.

Appendix A

On consideration whereof, it is now here ORDERED AND ADJUDGED by this Court that the Order granting summary judgment to the plaintiff of the said District Court of March 26, 2001 is hereby reversed with directions that the Court grant the defendants' cross-motions for summary judgment. The Order of the said District Court of August 21, 2002, structuring the remedy, is hereby vacated. Costs taxed against plaintiff Patrick C. English. All of the above in accordance with the opinion of this Court.

ATTEST:

s/ [illegible]
Acting Clerk

Dated: August 2, 2002

APPENDIX B — OPINION AND ORDER OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY DATED AUGUST 21, 2001 AND FILED AUGUST 29, 2001

THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

Civil No. 00-5394
Hon. Faith S. Hochberg, U.S.D.J.

PATRICK ENGLISH,

Plaintiff,

vs.

THE BOARD OF EDUCATION OF THE TOWN OF BOONTON, et al.,

Defendants.

OPINION AND ORDER

Date: August 21, 2001

***HOCHBERG, District Judge*:**

This matter comes before the Court to determine an interim remedy following this Court's finding that the New Jersey statute governing the relative voting power of two school districts in a sending-receiving relationship, N.J.S.A. 18A:38-8, was unconstitutional as applied to the districts of Lincoln Park and Boonton. *English v. the Board of Education*

of the Town of Boonton, 135 F. Supp. 2d 588 (D.N.J. 2001) ("*English I*"). Post-judgment, the parties were required to meet and propose a joint resolution to the constitutional infirmity found by the Court. Those meetings produced no fruitful solution to be implemented until the state legislature enacts a new statute, and this Court will therefore devise the appropriate interim remedy. Upon enactment of new state legislation, either side may petition to vacate this interim remedy.

I. FACTUAL AND PROCEDURAL HISTORY

As described in greater detail in this Court's March 26, 2001 Opinion, the town of Lincoln Park maintains its own elementary school system, but entered into a sending-receiving relationship with the town of Boonton over 50 years ago for education of its high school students at Boonton High School. N.J.S.A. 18A:38-8 provides that Lincoln Park, the sending district, shall have one seat on Boonton's Board of Education, irrespective of the relative populations of the two towns. Census data for the year 2000 reveals that the population of Lincoln Park is 10,930 while Boonton's population is 8,496. Thus, the citizens of the town of Lincoln Park represent approximately 56% of the combined population of the two districts and 52% of the high school student population. Pursuant to N.J.S.A. 18A:38-8, the citizens of Lincoln Park are represented by one Board member while the citizens of Boonton have nine out of the ten Board members elected to represent their interests. This Court held that "the Equal Protection clause of the Fourteenth Amendment requires that votes on the Board of Education of Boonton, for all matters affecting the citizens of Lincoln

Park, must be apportioned in a manner which complies with the principles of 'one person, one vote' ". *English I*, 135 F. Supp. 2d at 596. Consequently, the Court declared N.J.S.A. 18A:38-8 unconstitutional as applied to the districts of Lincoln Park and Boonton.[1]

II. DISCUSSION

A. Plaintiff's Proposed Remedy

Plaintiff proposes two possible remedies: first, plaintiff suggests that three or four members of the Lincoln Park Board of Education ("Lincoln Park Board" or "Lincoln Park") be selected to sit on the Boonton Board of Education ("Boonton Board" or "Boonton"). The Lincoln Park members' votes would be weighted to give them 56% of the total board vote, a number equivalent to Lincoln Park's percentage of the combined population of both towns, but the Lincoln Park Board members would only vote on issues which affect the high school. Alternatively, plaintiff suggests creating a separate board of education for high school matters, consisting of nine members; Lincoln Park would elect five members and Boonton would elect four members.[2]

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1. All facts above are cited from the Court's Opinion and Order of March 26, 2001. *English*, 135 F.Supp.2d at 589-92. These facts were uncontested and formed the basis of this Court's Opinion granting summary judgment.

2. The Court also sought the input of other interested but unnamed parties during the remedy phase. At the invitation of the Court, the Lincoln Park Board sent a representative to oral argument.

(Cont'd)

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B. State's Proposed Remedy

The New Jersey State Commissioner of Education ("the Commissioner") proposes that the Court model its remedy after N.J.S.A. 18A:38-8.4. Section 8.4 governs the sending-receiving relationship in "sixth-class" counties and bases the number of representatives allotted to a sending school district on a sliding scale. Based on this scale, a sending district whose students comprise at least 40% of the total enrollment of pupils in a school is permitted three representative's on the receiving district's board. Section 8.4 further provides that the sending district representatives be added to the existing receiving board and be permitted to vote on only those matters authorized by N.J.S.A. 18A:38-8.1. Thus, pursuant to the Commissioner's proposal, Lincoln Park would be given three seats on the Boonton Board comprised of twelve total members, representing 25% of the total board vote on issues within the purview of section 8.1.

(Cont'd)

The representative informed the Court that the Lincoln Park Board fully supports plaintiff's proposal, with one minor exception. The Lincoln Park Board suggested that, should the Court create three or four seats for Lincoln Park representatives on the Boonton Board, the members be appointed from the current Lincoln Park Board in order to act as liaisons between the two bodies. Further, the Lincoln Park Board requested that any vote on the Boonton High School budget or other high school referenda be put to a vote in both the towns of Boonton and Lincoln Park. (Transcript, July 23, 2001, pp. 24-27). Finally, the Court reviewed an unsolicited letter from two citizens of Lincoln Park who are former members of the Lincoln Park Board.

However, the Commissioner's proposal does not comport with the principles of "one person, one vote" as it affects Boonton High School. The Commissioner was unable to proffer any rational basis underlying the state statute's disparate treatment of "sixth class" counties compared with all other counties in sending-receiving relationships, nor any reason why the application of this statutory provision to the facts of this case satisfies the Supreme Court's rulings. This proposal has already been rejected in an analogous case, upon a finding that the statute was special legislation "enacted with the prior approval of both districts [where] the issues of voter representation were not considered". *Board of Educ. of Branchburg v. Livingston*, No. 98-5557, slip op. at 9 (D.N.J. May 22, 2001). This Court agrees with Judge Thompson's assessment of N.J.S.A. 18A:38-8.4 in this context.

C. Boonton Board of Education's Proposed Remedy

The Boonton Board suggests severing the sending-receiving relationship between itself and Lincoln Park. Boonton argues that severance is the best remedy because it will avert future disputes between the parties and avoid a scenario where the Lincoln Park representatives control facilities that are not owned by the citizens of Lincoln Park.

First, the Court notes that the issue of severance was addressed on the motions for summary judgment when all parties, including Boonton, did not contest that severance of the sending-receiving relationship would be deleterious for the students of both towns. This issue was thus decided by this Court in the Opinion and Order dated March 26, 2001.

Appendix B

In support of its motion for summary judgment, plaintiff submitted an affidavit of undisputed material facts that neither Boonton nor the Commissioner contested on this point.[3] Plaintiff averred that the withdrawal of a majority of the students from Boonton High School would "substantially disrupt educational programs" and "devastate the finances of the high school." *English I*, 135 F.Supp.2d at 592. The Court found that Defendants did not dispute these facts. *Id.* All parties are therefore estopped from arguing for the first time during the "remedy" hearing that severance would not be harmful to the students of both districts.[4] Accordingly, given the record in this case, the Court does not consider severance a viable option.

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3. Defendants submitted no counter-statement of material facts, nor any timely refutation of plaintiff's affidavit. Although untimely, Defendants did contest one reference to the word "rancourous" and a statement that predicts the likely future outcome of state administrative proceedings if an application to withdraw were to be made. These statements of the affidavit were not considered by the Court. *English*, 135 F.Supp.2d at 591, n. 5. The Court invited the Commissioner to submit any past administrative action by the Commissioner in which withdrawal of a greater than 25% of the student body in a sending-receiving relationship was approved. None was submitted. (The Commissioner did submit one case in which he approved the uncontested withdrawal of less than 25% of the student body.)

4. At oral argument on the remedy, the Court learned that the Boonton Board had recently passed a resolution petitioning the Commissioner for severance of the sending-receiving relationship with Lincoln Park. (Transcript, July 23, 2001, p. 53). This request is clearly inconsistent with the Boonton Board's prior position in this

(Cont'd)

Appendix B

D. Court's Remedy

This Court held that "[t]he Equal Protection clause of the Constitution requires that the votes on the Boonton Board, for all purposes which affect the citizens of Lincoln Park, must be apportioned in a manner as to give equal weight, as far as is practicable, to the voters of Lincoln Park and Boonton." *English*, 135 F. Supp. 2d at 596. Accordingly, for those issues that "affect the citizens of Lincoln Park", the interests of the voters of the respective towns must be balanced to determine representation on the Boonton Board. Since it is primarily issues concerning Boonton High School which affect the citizens of Lincoln Park, a scheme that recognizes their heightened interest in those issues is the baseline for an appropriate remedy. The Court also recognizes, however, as did Judge Thompson in *Branchburg*, that the citizens of Boonton have a larger stake than do the citizens

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(Cont'd)
case. Furthermore, the Boonton Board's action was taken after the Court declared the statute unconstitutional and after the talks with the plaintiff failed to produce an amicable remedy. This Court views the Boonton petition as a retaliatory reaction to an adverse judgment in this litigation; moreover, the petition itself constitutes the vote of a Board whose composition had already been held to be unconstitutional in voting on issues affecting the high school. This Court notes, finally, that the Commissioner is also a defendant in this action who, through his briefs and argument of counsel (the Attorney General of New Jersey) conceded in the prior proceedings on summary judgment that severance of the relationship would "substantially disrupt educational programs" and "devastate the finances of the high school". It would therefore be utterly disingenuous for the Commissioner now to even consider granting Boonton's petition for severance.

of Lincoln Park in issues which affect the Boonton school district as a whole. *Branchburg*, slip op. at 9. The Court seeks to craft a remedy that will balance these countervailing interests equitably, while enforcing the "one person, one vote" principle.

Accordingly, the Court will order the Lincoln Park Board to select three of its members to sit on the Boonton Board; those three new members will be added to the current board, which is comprised of nine Boonton members and one Lincoln Park member, bringing the total Board membership to thirteen. The four Lincoln Park board members will be limited to voting on those issues enumerated in section 8.1 of the statute, as interpreted by case law.[5] The Lincoln Park members' votes will be weighted by a factor of 2.5 on those issues that affect *only the high school.* The citizens of Lincoln Park, through their elected board members, will be represented by approximately 53% of the total vote on this category of issues as they affect the high school. This weighting will achieve, as nearly as practicable, representation proportionate to Lincoln Park and Boonton's respective proportion of the combined population of the two districts.

Voting representation on district-wide issues will be weighted differently because, while they also "affect the citizens of Lincoln Park", they do so to a lesser degree. These issues, such as the election or hiring of school district central staff, have a disproportionately greater impact on Boonton voters compared with Lincoln Park voters because they affect

5. The issues itemized in section 8.1 were not contested in this litigation, only the voting disparity created by the statute.

an entire district comprised of predominately Boonton students. Therefore, on district-wide issues within the purview of section 8.1, the Lincoln Park members' votes will be weighted .7 to reflect the reduced, but still significant, interest of the citizens of Lincoln Park in district-wide issues. On these issues, Lincoln Park citizens will be represented by approximately 23% of the Board members' votes. The Court has determined this weighting system by using the student composition of the Boonton school district as a proxy for the relative interests of the citizens of Lincoln Park and Boonton.[6] Because district-wide issues affect Boonton's elementary school children but not Lincoln Park elementary school children (who remain in the Lincoln Park school district, controlled by the Lincoln Park Board) the interest of the citizens of Lincoln Park is considerably less than that of Boonton citizens. Clearly, on those issues that affect only Boonton's elementary school, the Lincoln Park board members will have no vote at all. All parties have represented to the Court that it is easy to determine which issues are "high school only", "elementary school only", and "district-wide".[7]

---

6. As of June of 2001, the total Boonton school district population was 1,281 elementary, middle, and high school students. Three hundred of those students were from Lincoln Park, representing approximately 23.4% of the total Boonton school district student population. These numbers were submitted to the Court by the plaintiff and were undisputed by Defendants.

7. The plaintiff so asserted at oral argument and both parties later agreed in chambers.

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This two tiered voting structure will alleviate many of the Defendants' concerns regarding a perceived "take-over" of the Boonton school district by the citizens of Lincoln Park. The Defendants' concerns in this respect were also expressed by Judge Thompson in *Branchburg*. Judge Thompson noted that the sending school district could not be given a majority on the receiving board despite the sending district's greater population because "many issues affecting the [sending district] high school students also affect the entire [receiving] school district including the [receiving district's] grammar schools and middle school . . . " *Branchburg*, slip op. at 9. Judge Thompson continued, "[s]uch decisions affect the entire [receiving] school district of which, [the sending district] does not possess a majority of the total pupil population." *Id.* By implementing a voting scheme that alters the sending district's voting power depending upon the particular issue and one that considers central office administration a "district-wide" issue, this Court has alleviated the concerns articulated in *Branchburg*.

The Court recognizes that a voting scheme which gives Lincoln Park representatives a majority vote on high school issues within the purview of section 8.1 will, consequently, give Lincoln Park members a majority vote on the amount of tuition they pay to Boonton for the education of their students. *See* N.J.S.A. 18A38:8.1. However, the Commissioner in his papers has represented that the state review process for tuition provides for a "thoughtful review process"; Boonton, a co-defendant of the Commissioner, joined in that description by the state, and does not contest that this state review process would protect Boonton as well as Lincoln Park. In addition, either district may request a special tuition audit to verify that tuition payments are fair and accurate.

This remedy upholds the constitutional mandate of "one person, one vote" while balancing the respective interests of the citizens of the towns of Boonton and Lincoln Park. This remedy shall remain in effect until the New Jersey Legislature amends the statute in a manner which reflects the constitutional mandate of "one person, one vote". *Hadley*, 90 S.Ct. 791; *see also Marlboro Township Board of Educ. v. Freehold Regional High School*, 992 F. Supp. 756 (D.N.J. 1998).

III. CONCLUSION

For the foregoing reasons, it is hereby **ORDERED** on this 21st day of August 2001, that the voting relationship between the school districts of Boonton and Lincoln Park for the purposes of their sending-receiving relationship be restructured as set forth in this opinion; and it is further

ORDERED that this case is hereby closed.

s/ Faith S. Hochberg
Hon. Faith S. Hochberg, U.S.D.J.

APPENDIX C — OPINION AND ORDER OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY DATED MARCH 26, 2001

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

Civil No. 00-5394
Hon. Faith S. Hochberg, U.S.D.J.

PATRICK C. ENGLISH,

Plaintiff,

vs.

THE BOARD OF EDUCATION OF THE TOWN OF BOONTON, et al.,

Defendants.

OPINION AND ORDER

Date: March 26, 2001

***HOCHBERG, District Judge*:**

This matter comes before the Court on cross-motions for summary judgment filed by Plaintiff Patrick C. English and Defendant Vito Gagliardi, Sr., Acting Commissioner of

Appendix C

Education of the State of New Jersey (the "State").[1] The issue in this case is the extent to which the Fourteenth Amendment's "one person, one vote" principle applies to representation on a town's school board which governs a high school engaged in a "sending-receiving" relationship with another town. This Court having reviewed the submissions and oral argument of the parties, and for the reasons set forth below, this Court grants summary judgment for Plaintiff.

I. *FACTUAL AND PROCEDURAL HISTORY*

Plaintiff is a resident of Lincoln Park, New Jersey, and brings this lawsuit in his capacity as a citizen. Plaintiff is also a member of the Lincoln Park Board of Education.[2] Lincoln Park is the "sending" district in a "sending-receiving" relationship with Boonton, New Jersey. Boonton High School is governed by the Boonton Board of Education (the "Boonton Board"), which has nine members from Boonton. Pursuant

1. The State's motion was originally cast as a motion to dismiss under Fed.R.Civ.P. 12(b)(6); the parties having subsequently agreed that no material issue of fact was in dispute, Plaintiff and the State agreed to convert the State's motion to a motion for summary judgment.

2. At oral argument, Plaintiff stated that one of the reasons the Board of Education of Lincoln Park, or the town of Lincoln Park, declined to bring the instant lawsuit was the potentially high financial cost of the litigation. Plaintiff submitted a resolution passed by the Board of Education of Lincoln Park (the "Lincoln Park Board") referencing the instant lawsuit and stating that "the Lincoln Park Board of Education requests that the Boonton Board of Education not contest this action."

to N.J. Stat. Ann. § 18A:38-8, Lincoln Park is allotted only one representative to the Boonton Board, despite the fact that Lincoln Park pays tuition to send its high school students to Boonton High School, and Lincoln Park students constitute 52% of the Boonton High School population. Plaintiff filed a Complaint on November 1, 2000, alleging that N.J. Stat. Ann. § 18A:38-8 is unconstitutional as it (1) violates the Due Process and Equal Protection clauses of the United States Constitution; (2) violates Plaintiff's civil rights under 28 U.S.C. § 1983; and (3) violates the Equal Protection guarantees of the New Jersey Constitution.

The New Jersey legislature requires each public school district to educate, at its own expense, all students who are domiciled within that district. N.J. Stat. Ann. § 18A:38-1. Pursuant to this statutory scheme, school districts without high schools may designate a high school outside of the district for its students to attend, with the consent of the receiving school district; the "sending" district pays tuition to the receiving school for the education of its students (known as a "sending-receiving" relationship). N.J. Stat. Ann. § 18A:38-3, -8. School districts engaged in sending-receiving relationships may not withdraw from the relationship without the consent of the State. N.J. Stat. Ann. § 18A:38-13. For school districts in most counties in New Jersey, the statute provides for no more than one representative of the sending district to participate on the receiving district's board of

education, regardless of the relative populations of the two districts.[3] N.J. Stat. Ann. § 18A:38-8.2. In relevant part, the statute provides:

> A school district which is sending pupils to another school district pursuant to N.J.S. 18A:38-8 shall have representation on the board of education of the receiving school district as follows:
>
> a. (1) If the pupils of the sending district comprise less than 10 percent of the total enrollment of the pupils in the grades of the receiving district in which the pupils of the sending district will be enrolled, the sending district shall have no representation on the receiving district board of education.
>
> (2) If the pupils of the sending district comprise at least 10 percent of the total enrollment of the pupils in the grades of the receiving district in which the pupils of the sending district will be enrolled, the sending district shall have one representative on the receiving district board of education.

N.J. Stat. Ann. § 18A:38-8.2.

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3. In "sixth class" counties, the number of representatives of the sending school district on the school board is determined by a sliding scale, based on the relative number of students in the high school from the sending district and the receiving district. N.J. Stat. Ann. § 18A:38- 8.4. The State is unable to provide any rational basis for the difference between the statute which governs sixth class counties and the statute which governs all other districts, including Boonton and Lincoln Park, N.J. Stat. Ann. § 18A:38-8.2.

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The sending district's board representative is entitled to vote on the following matters provided in the statute:

> a. Tuition to be charged the sending district by the receiving district and the bill lists or contracts for the purchase, operation or maintenance of facilities, equipment and instructional materials to be used in the education of the pupils of the sending district;
>
> b. New capital construction to be utilized by sending district pupils;
>
> c. Appointment, transfer or removal of teaching staff members providing services to pupils of the sending district, including any teaching staff member who is a member of the receiving district's central administrative staff; and
>
> d. Addition or deletion of curricular and extra-curricular programs involving pupils of the sending district.

N.J. Stat. Ann. § 18A:38-8.1.

Alternatively, several school districts without high schools may form a "regional" district for the education of all high school students within the towns comprising the regional district. The regional district elects a single board of education to govern the schools. See N.J. Stat. Ann. § 18A:13-1, -3, -5.

Appendix C

The town of Lincoln Park maintains its own elementary school, but entered into a sending-receiving relationship with the town of Boonton over 50 years ago for education of its high school students at Boonton High School.[4] U.S. Census data reveals that in 2000, the population of Lincoln Park was 10,930 and the population of Boonton was 8,496. The Lincoln Park population thus continues to represent approximately 56% of the population of the two districts combined and approximately 52% of the students in Boonton High School. Pursuant to N.J. Stat. Ann. § 18A:38-8.2, the Lincoln Park Board is entitled to appoint one representative to the Boonton Board, and that representative may vote on the issues itemized in N.J. Stat. Ann. § 18A:38-8.1. The citizens of Boonton elect the remaining nine members. Thus, 56% of the combined population of the two districts (and 52% of the students' interests) are represented by one Board representative; the remaining 44% of the population (and 48% of the students) have nine out of the ten Board members elected to represent their interests.

The sending-receiving relationship between Lincoln Park and Boonton has led to at least four major lawsuits between the districts, on topics ranging from the Lincoln Park Board

4. Originally, the districts of Montville, Mountain Lakes and Boonton Township were also sending schools to Boonton High School. All three districts were permitted to withdraw from the relationship because, according to Plaintiff, their school populations were not large enough to disrupt Boonton High School by withdrawing. (English Aff., ¶ 5). Defendants have not disputed the reason these three schools were permitted to withdraw.

representative's right to receive information to overcharging of tuition to Lincoln Park. (English Aff., ¶ 6, 7).[5] The district of Lincoln Park may not withdraw from this relationship without the consent of the State. N.J. Stat. Ann. § 18A:38-13. In order to submit a proposal to withdraw, the district must prepare and submit a feasibility study; the Commissioner of Education must then "make equitable determinations based upon consideration of all the circumstances, including the educational and financial implications for the affected districts, the impact on the quality of education received by pupils, and the effect on the racial composition of the pupil population of the districts." *Id.* This statute further provides that the Commissioner of Education "shall grant the requested change in designation or allocation if no substantial negative impact will result therefrom." *Id.*

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5. Plaintiff submitted an affidavit in support of his motion for summary judgment ("English Aff."). Defendants did not submit any affidavit or certification in opposition, and in fact have stated that no genuine issues of material fact exist. Although in their reply brief, Defendants opposed part of the English Aff. as "includ[ing] matters not within the affiant's personal knowledge," Defendants submitted no affidavit or certification to oppose the facts in the English Aff. At oral argument, however, the State conceded that Defendants do not contest anything in the English Aff. other than: (1) one reference to the word "rancorous" and (2) a statement in which Mr. English purports to predict the outcome of an application to withdraw by Lincoln Park. (English Aff., ¶ 19); (Transcript, at 16). In addition, the parties agreed in the summary judgment papers and at a conference before Magistrate Judge Chesler that there were no material facts in dispute. (Transcript, at 53).

Plaintiff avers, and Defendants do not dispute, that the withdrawal of a majority of the students from Boonton High School, which is relatively small, would "substantially disrupt educational programs" and "devastate the finances of the high school." (English Aff., ¶ 19). Plaintiff also certified that the Boonton Board has asserted in the past that the finances and educational programs would be devastated if Lincoln Park did in fact withdraw, and neither the Boonton Board of Education nor the State has disputed this assertion. (English Aff., ¶ 19). In addition, a request for withdrawal, especially if opposed by Boonton, would be financially burdensome on Lincoln Park. Finally, Plaintiff asserts "the Commissioner [of Education] has never allowed a send-receive relationship to be terminated under that statute when the sending district comprises more than 25% of the high school's students." (Complaint, ¶ 19). The State was unable to provide this Court with any precedent which contradicted this assertion.

II. *STANDARD OF REVIEW*

Pursuant to Rule 56(c), a motion for summary judgment will be granted

> if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

See also Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247 (1986); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986).

In other words, "[s]ummary judgment may be granted only if there exists no genuine issue of material fact that would permit a reasonable jury to find for the nonmoving party." *Miller v. Indiana Hosp.*, 843 F.2d 139, 143 (3d Cir. 1988). All facts and inferences must be construed in the light most favorable to the non-moving party. *See Peters v. Delaware River Port Auth. of Pa. and N.J.*, 16 F.3d 1346, 1349 (3d Cir. 1994).

Substantive law controls the inquiry into which facts are "material." *Anderson*, 477 U.S. at 248. An issue is "genuine" if a reasonable jury could decide the issue in the nonmovant's favor. *Id.* Thus, "[o]nly disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment." *Id.*; *accord Ridgewood Bd. of Educ. v. M.E.*, 172 F.3d 238, 252 (3d Cir. 1999) (*citing Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574 (1986)).

III. *DISCUSSION*

Citizens have a fundamental, constitutionally protected right to participate in congressional and certain local elections on an equal basis with other voters. *See, e.g., Dunn v. Blumstein*, 405 U.S. 330, 336 (1972); *Hadley v. Junior College District*, 397 U.S. 50, 56 (1969); *Wesberry v. Sanders*, 376 U.S. 1, 84 (1964); *Reynolds v. Sims*, 377 U.S. 533, 560-565 (1964); *Avery v. Midland County* 390 U.S. 474, 485 (1968); *Evans v. Cornman*, 398 U.S. 419, 421-422, 426 (1970); *Kramer v. Union Free School District No. 15*, 395

U.S. 621, 626-628 (1969).[6] This Equal Protection guarantee provides that states must conduct elections in a manner to ensure that, as nearly as practicable, each person's vote is given substantially equal weight as that of any other voter. *Hadley*, at 54. The Supreme Court has held that this Equal Protection guarantee does extend to local governmental elections for members of a board of education. *Id.*, at 54. The Supreme Court stated:

> We therefore hold today that as a general rule, whenever a state or local government decides to select persons by popular election to perform governmental functions, the Equal Protection Clause of the Fourteenth Amendment requires that each qualified voter must be given an equal opportunity to participate in that election, and when members of an elected body are chosen from separate districts, each district must be established on a basis that will insure, as far as is practicable, that equal numbers of voters can vote for proportionally equal numbers of officials. It is of course possible that there might be some case in which a State elects certain functionaries whose duties are so far removed from normal govern-

6. *Cf. Ball v. James*, 451 U.S. 355, 362 (1981). The Supreme Court has held that the "one person, one vote" principle of the Fourteenth Amendment may not strictly apply to the election of officials of certain special-purpose units of local government, such as irrigation districts. *See also Pittman v. Chicago Board of Educ.*, 64 F.3d 1098, 1102 (7th Cir. 1995) (citing *Ball v. James*, 451 U.S. 355, 362 (1981); *Salyer Land Co. v. Tulare Lake Basin Water Storage District*, 410 U.S. 719, 731-733 (1973)).

> mental activities and so disproportionately affect different groups that a popular election . . . might not be required, but certainly we see nothing in the present case that indicates that the activities of these trustees [of the junior college Board of Education] fit in that category. Education has traditionally been a vital governmental function and these trustees, whose election the State has opened to all qualified voters, are governmental officials in every relevant sense of that term.

Id. at 56.

Since *Hadley*, numerous courts have applied this "one person, one vote" principle to elections of local educational officials. *See, e.g. Baker v. Regional High School District*, 520 F.2d 799, 803 (2d Cir. 1975) ("The [regional high school] boards here are elective bodies serving governmental functions. They must be organized to reflect one person-one vote principles."); *Marlboro Township Board of Ed. v. Freehold Regional High School*, 992 F.Supp. 756 (D.N.J. 1997). Recently, in an unpublished opinion in this District, *Board of Educ. of Branchburg v. Livingston*, No. 98-5557, Chief Judge Thompson applied the *Hadley* voting principles to the sending-receiving relationship between the Branchburg and Livingston districts, and found the statute, as applied, to be unconstitutional.[7] *Id.* The New Jersey Supreme Court

7. Following Chief Judge Thompson's opinion, the Defendants in *Branchburg* filed a petition to the Third Circuit for permission to appeal. On or about January 22, 2001, the Third Circuit denied the petition. The State has petitioned for rehearing *en banc*.

has interpreted *Hadley* to require the "one person, one vote" Equal Protection guarantee to apply to the election of board members for a regional high school. *Franklin Township v. Board of Educ. of N. Hunterdon High School*, 74 N.J. 345, 352 (1977). This Court finds that the Equal Protection clause of the Fourteenth Amendment requires that votes on the Board of Education of Boonton, for all matters affecting the citizens of Lincoln Park, must be apportioned in a manner which complies with the principles of "one person, one vote."

As did the citizens in *Hadley* and *Branchburg*, the citizens of Lincoln Park have a fundamental interest in the education of their students and in proportionate representation on the Boonton Board.[8] As set forth in the relevant part of the statute, N.J. Stat. Ann. § 18A:38-8.1, the Boonton Board has the power to hire and fire teachers, set curricula and change extracurricular activities. Furthermore, the citizens of Lincoln Park have an interest in the amount of tuition payments the town must make for students sent to the Boonton High School, which payments are determined in part by the high school budget voted on by the Boonton Board. Decisions by the Boonton Board thus have a direct and significant impact on the lives of all Lincoln

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8. Although the parties do not raise the issue, this Court finds that *Pittman v. Chicago Board of Educ.* 64 F.3d 1098 (7th Cir. 1995) is distinguishable. Unlike the councils at question in *Pittman*, which had neither taxing authority nor control over the school budget, the Boonton Board has a significant, direct impact on Lincoln Park students and residents. For example, the Boonton Board may cause an increase in the tuition payments made by Lincoln Park.

Park citizens, and their interest in such matters is not diminished by virtue of the fact that they live outside the Boonton school district. However, due to the statutory requirements of N.J. Stat. Ann. § 18A:38-8, the citizens of the town of Lincoln Park, despite representing well over 50% of the combined population of the two districts (and over 50% of the Boonton High School population), may elect only one representative to the Boonton Board, while the citizens of Boonton have the right to elect nine members. The unequal apportionment of voting power in the statute thus "results in a systematic discrimination against voters" in Lincoln Park. *Hadley*, 397 U.S. at 57.

Defendants have not proffered a rational basis (and certainly not a compelling state interest) for the discrepancy in voting power mandated by the statute, and this Court finds that none exists. Consequently, this Court finds that N.J. Stat. Ann. § 18A:38-8, as applied to the districts of Boonton and Lincoln Park, violates the Equal Protection guarantee of equal voting strength for each voter.[9]

The State claims, however, that the constitutional requirement of "one person, one vote" is inapplicable to sending-receiving relationships, because Boonton and Lincoln Park are separate geographical districts. However,

9. The statute is unconstitutional as applied; it is not necessarily unconstitutional on its face. Depending on the relative populations of the districts in question, the statute may in some instances result in representation that, as practicably as possible, reflects the "one person, one vote" requirement.

Appendix C

Hadley involved eight separate school districts which combined for the purposes of forming a junior college district. *Hadley*, 397 U.S. at 792-3. The geographic boundaries which separated the districts for all purposes other than the junior college had no impact on the applicability of the constitutional right of the citizens of one district to have his or her vote given the same weight as citizens of the other districts. *See Hadley* 397 U.S. at 793. As stated by the Supreme Court in *Hadley*, "when members of an elected body are chosen from separate districts, each district must be established on a basis that will insure, as far as is practicable, that equal numbers of voters can vote for proportionally equal numbers of officials." 397 U.S. at 54. Furthermore, regional school districts often involve separate geographical voting districts for all purposes other than voting for the regional high school board. *See, e.g., Franklin*, 74 N.J. at 352. Thus, the fact that the districts are separate voting districts for other purposes is not controlling; the voting power of the two districts on the Board must be apportioned in a manner to reflect the "one person, one vote" constitutional requirement.

The State also claims that the "one person, one vote" requirement should not apply to sending-receiving relationships because they are voluntary, contractual arrangements. Although the initial decision to enter into a sending-receiving relationship is a voluntary one, after that initial determination the sending school may not voluntarily

terminate the relationship without the approval of the State.[10] N.J. Stat. Ann. § 18A:38-13. As stated in Part I above, it is a virtual certainty that withdrawal is not a realistic option for Lincoln Park.[11]

Furthermore, although the districts continue to enter into contracts governing some aspects of the sending-receiving relationship, the statutory scheme dictates, to a large degree, the limited voting power of the sending district. Most

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10. The fact that the sending school must obtain State approval to withdraw demonstrates that the relationship is not "voluntary" in the sense that the participants willingly and voluntarily contracted away their right to equal representation. Furthermore, this Court notes that historically, the State has been unwilling to allow a sending school with a majority of the school population to withdraw due to the impact on the receiving school. A separation of these two school districts would surely entail lengthy, expensive litigation, with virtually no chance of success.

11. At oral argument, the State asserted that the *Branchburg* case is distinguishable because the sending district had submitted an application to withdraw from the sending-receiving relationship. However, later discussion during arguments revealed that the request to withdraw had occurred over fifteen years prior to the ensuing litigation before Chief Judge Thompson. Furthermore, the conduct of the parties in this case indicates that (i) Boonton in the past has indicated its opposition to withdrawal by Lincoln Park (English Aff., ¶ 19, 20) and (ii) the State is unlikely to grant any such request. (*See* Complaint, at 19). Defendants have not, however, argued that the matter is not ripe for adjudication; this Court finds that Lincoln Park's failure to formally petition the State to withdraw from the sending-receiving relationship does not affect the constitutional issue at bar.

importantly, the districts cannot negotiate the number of Board representatives and the voting powers of such representatives; the number of Board representatives and the voting rights of that representative are governed by statute, not contract. *See* N.J. Stat. Ann. § 18A:38-8.1, 8.2. The State's argument, which implies that the sending school contracted away its voting rights, is unsupported by the actual mandate of the statute in question.

This Court thus finds that N.J. Stat. Ann. § 18A:38-8 is unconstitutional as applied to the sending-receiving relationship between Lincoln Park and Boonton. The Equal Protection clause of the Constitution requires that the votes on the Boonton Board, for all purposes which affect the citizens of Lincoln Park, must be apportioned in a manner as to give equal weight, as far as is practicable, to the voters of Lincoln Park and Boonton. However, given the significant impact of this Opinion and the Opinion of Chief Judge Thompson in *Branchburg* on these districts, this Court finds that it is appropriate to allow the State to propose a solution for resolving this issue for this Court's consideration.

Appendix C

IV. *CONCLUSION*

For the foregoing reasons, it is hereby **ORDERED** that Plaintiff's motion for summary judgment is **GRANTED**;[12] and it is further

ORDERED that the State's motion for summary judgment is **DENIED**; and it is further

ORDERED that the State and Plaintiff shall confer and propose a joint resolution by April 30, 2001; if the parties cannot agree on a proposed solution, the State shall set forth a proposal to this Court no later than May 18, 2001, for a constitutional resolution to this case; and Plaintiff shall respond to the State's proposed solution by May 31, 2001.

s/ Faith S. Hochberg
Hon. Faith S. Hochberg, U.S.D.J.

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12. This Court declines to reach Plaintiff's remaining claims. This Court also exercises its discretion not to retain jurisdiction of the supplemental state law claim asserted in the Complaint, and such claim is dismissed without prejudice. At oral argument, Plaintiff waived his motion for payment of attorney's fees and expenses, and such claim is therefore dismissed as moot.

APPENDIX D — OPINION OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY DATED SEPTEMBER 5, 2000 AND FILED SEPTEMBER 7, 2000

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

Civil Action No: 98-5557 (AET) (Consol.)

BOARD OF EDUCATION of the TOWNSHIP OF BRANCHBURG, GREGORY SCOTT, GERALDINE FELDMAN, PATRICIA BOWERS, ROBERT J. FULTON, JR., BETH KOVACS, CHRISTINE IHLING, STEVEN JANKOSKI,

Plaintiffs,

v.

DAVID LIVINGSTON, Somerset County Superintendent, LEO F. KLAGHOLZ, State Commissioner of Education, and THE BOARD OF EDUCATION OF THE BOROUGH OF SOMERVILLE, A Body Politic of the State of New Jersey,

Defendants.

OPINION

THOMPSON, U.S.D.J.

These matters are before the Court on cross motions for summary judgment filed by all parties. At issue in this case is a New Jersey statute regarding representation on local

school boards and the doctrine of "one person, one vote". The Court decided these matters after hearing oral argument on July 6, 2000.

BACKGROUND

The facts of this case are not in dispute. Public schools in New Jersey are organized into geographic areas called school districts. Each school district is required to provide education, at its own expense, to the students domiciled within the district. However, where a given district does not have high school facilities, that district must designate a high school outside the district to receive its high school students, pursuant to the following statutory language:

> The board of education of every school district which lacks high school facilities within the district and has not designated a high school or high schools outside of the district for its high school pupils to attend shall designate a high school or high schools of this state for the attendance of such pupils.

N.J. STAT. ANN. § 18A:38-11. Another New Jersey statute permits school districts to receive such students. N.J. STAT. ANN. § 18A:38-8. When two school districts enter into an agreement whereby the students of the sending district attend school in the receiving district, such an agreement is commonly called a send-receive relationship.

When sufficient numbers of students from one district attend school in another district, the sending district is entitled

to representation on the receiving district's school board as follows:

> A school district which is sending pupils to another school district pursuant to § 18A:38-8 shall have representation on the board of education of the receiving school district as follows:
>
> a. (1) If the pupils of the sending district comprise less than 10 percent of the total enrollment of the pupils in the grades of the receiving district in which the pupils of the sending district will be enrolled, the sending district shall have no representation on the receiving district board of education.
>
> (2) If the pupils of the sending district comprise at least 10 percent of the total enrollment of the pupils in the grades of the receiving district in which the pupils of the sending district will be enrolled, the sending district shall have one representative on the receiving district board of education.

N.J. STAT. ANN. § 18A:38-8.2 (the "Representation Statute" or "Statute").

As an alternative to creating a send-receive relationship, a school district may also seek to form a regional school district with other area school districts. A regional school district is a separate political entity which is jointly controlled by its constituent districts. N.J. STAT. ANN. § 18A:13-4, 13-5,

13-8. School districts must follow a statutory procedure to form a regional school district, which includes consultation with the State Commissioner of Education and a referendum vote. N.J. STAT. ANN. § 18A:13-34.

In 1956, the Branchburg Board and the Somerville Board entered into a send-receive relationship. This agreement allowed students from Branchburg to attend Somerville's high school and provided for tuition payments from Branchburg to Somerville to cover the education costs for those students. Branchburg entered into this Agreement because it did not have a high school in its borders, while Somerville had a high school large enough to accommodate students from both the Branchburg and Somerville districts.

The parties agree that during the 1997-98 school year, Branchburg sent 432 students to attend high school in the Somerville district. That same year, 366 students domiciled in Somerville went to high school in their own district. Thus, Branchburg students accounted for approximately 55% of the Somerville district's high school student population, while students from Somerville accounted for 45%. The parties also agree that these percentages remain virtually the same today.

Under the Representation Statute, given this ratio of students, the Branchburg Board appointed one member to the 10 member Somerville Board. The Branchburg member is entitled to vote upon certain issues, including capital spending and teacher dismissal. N.J. STAT. ANN. § 18A:38-8.1. The votes of each member of the Somerville Board are equally weighted.

Appendix D

Plaintiffs are requesting a declaration that N.J.S.A. 18A:38-8.2 is unconstitutional as it applies to the send-receive relationship between Branchburg and Somerville. More specifically, plaintiffs contend that the statute is unconstitutional under the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution, and Article 1, Sections 1 and 5 of the New Jersey Constitution.

DISCUSSION

Summary judgment is proper where the pleadings, depositions, answers to interrogatories, admissions, and affidavits show there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. FED. R. Civ. P. 56(c). In this case, the Court will draw all reasonable inferences in plaintiffs' favor, and will accept plaintiffs' evidence when considering the merits of the summary judgment motions. See *Pollock v. American Tel. & Tel. Long Lines*, 794 F.2d 860, 864 (3d Cir. 1986).

Defendants argue that before the Court considers the merits of this case, it should first consider whether plaintiffs should be constitutionally estopped from pursuing their claims. Defendants assert that it would be improper to allow plaintiffs to challenge the Representation Statute while still enjoying the benefits of the Statute, such as representation on the Somerville Board.

Constitutional estoppel does not attach where a given plaintiff enjoys a limited benefit under a challenged statute or government program, while the plaintiff is simultaneously suffering constitutional harm. *See S.J. Groves & Sons Co. v.*

Fulton County, 920 F.2d 752, 768 (11th Cir. 1991) (subsequent history omitted). In this case, plaintiffs have utilized the Representation Statute in the past to send high school students to Somerville. However, as will be seen below, the Representation Statute now burdens plaintiffs' voting rights, and therefore, plaintiffs are permitted to challenge the Statute.

The Court concludes that the Representation Statute is unconstitutional as applied because it denies Branchburg citizens the right to elect representatives to oversee the high school education of their children in contravention of the "one person, one vote" principle. The United States Supreme Court has consistently held that citizens have a substantial interest and fundamental right to exercise their right to vote for local school board members where those officials are chosen by the electorate at large. *See generally Hadley v. Junior College District*, 397 U.S. 50 (1969).

Branchburg's citizens have a substantial interest in the high school education of their children, as well as a right to elect those who will oversee that education. The principle of "one person, one vote" applies in this case. Although Branchburg's citizens do not live within the Somerville School District, their right to elect a local school board to oversee the education of their children who attend high school in Somerville is not diminished. This is not a case where the Somerville Board's activities have an "indirect extraterritorial effect" on the citizens of Branchburg and their children. *See Holt Civic Club v. City of Tuscaloosa*, 439 U.S. 60, 69-70 (1978). Nor is this a case where the Somerville Board exercises only limited powers over the educational lives of

its students. The Somerville Board is the governing body for the entire Somerville School District, including Somerville's high school. *See Pittman v. Chicago Bd. of Educ.*, 64 F.3d 1098, 1102-03 (7th Cir. 1995) (considering local school counsels which exercised limited powers over a single school with oversight from Chicago school board).

The parties agree that the Somerville Board makes crucial decisions regarding curriculum, hiring and firing of teachers, supervision and discipline of students, and facilities management. In addition, Branchburg's citizens pay a per pupil cost to Somerville which is based, at least in part, on debt service approved by Somerville's voters. These factors have more than an incidental effect on Branchburg citizens. They *directly* impact the future of Branchburg's children and the amount of money flowing from Branchburg to Somerville. In fact, Branchburg and Somerville citizens both have an identical interest in the education provided at Somerville's High School. The geographic political boundary between the Somerville and Branchburg Districts does nothing to change this identical level of interest. *See Evans v. Cornman*, 398 U.S. 419, 426 (1969) (noting residents of federal enclave had just as much interest in elections as residents living in state surrounding enclave); *Little Thunder v. State of South Dakota*, 518 F.2d 1253, 1255-56 (8th Cir. 1975).

The Court is aware that individual states should be given room to experiment with the allocation of state and local power. *See Holt*, 439 U.S. at 71. However, in this case, each representative from Somerville on Somerville's Board represents approximately 1,258 people, while the single Branchburg representative represents 14,782 people. This

representation scheme appears to violate the principle of "one person, one vote", and would therefore be unconstitutional.

Defendants have raised valid concerns regarding the possible remedies that might be imposed in this case. For example, allowing Branchburg to have a controlling majority on the Somerville school board would seriously impact the franchise of Somerville voters. The Court also recognizes that the New Jersey Legislature and New Jersey's Commissioner of Education are the proper parties to formulate appropriate remedies in this case. *See Township of Marlboro v. Board of Educ. of the Freehold Regional High School*, 992 F. Supp. 756, 765 (D.N.J. 1998).

In light of this, the Court will ask the Commissioner of Education to recommend within 60 days a constitutionally permissible manner for resolving this problem until the New Jersey Legislature can formulate a legislative solution. The Court will also ask the parties to draft a mutually acceptable standstill agreement as to the operations of the Somerville Board, which will not delay or interfere with the ongoing education program of the districts. Plaintiffs' request for attorneys fees will be considered at a later time.

CONCLUSION

For the reasons given above, plaintiffs' motions for summary judgment will be granted and defendants' motions for summary judgment will be denied. An appropriate Order will be filed with this Opinion.

Dated: Sept. 5, 2000